

8-13-2013

Cummings v. Stephens Clerk's Record v. 2 Dckt. 40793

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Cummings v. Stephens Clerk's Record v. 2 Dckt. 40793" (2013). *Idaho Supreme Court Records & Briefs*. 4589.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4589

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

Vol. 2 of 13

IN THE SUPREME COURT

OF THE STATE OF IDAHO

Supreme Court Docket No.
40793-2013

STEVEN CUMMINGS

Plaintiff/Appellant/ Cross Resp

vs.

LAW CLERK

ROGER L. STEPHENS, et al

Defendant/Respondent/Cross-

DAVID C. NYE District Judge

Appealed from the District Court of the SIXTH
Judicial District of the State of Idaho, in and for
BEAR LAKE County.

Nathan M. Olsen,

Attorney for Plaintiff/Appellant/Cross-Respondent

Brad Bearnson,

Attorney for Defendant/Respondent/Cross-Appellant

FILED - COPY

AUG 13 2013

Supreme Court Court of Appeals
Entered on ATS by

40793

TABLE OF CONTENTS

| <u>VOL.</u> | <u>PAGE NO.</u> | <u>DOCUMENT</u> |
|-------------|-----------------|---|
| Vol.1 | 1 - 8 | Complaint filed July 29, 2009 |
| Vol.1 | 9 - 20 | Answer and Third Party Complaint filed March 18, 2010 |
| Vol.1 | 21 - 22 | Motion for Summary Judgment filed Aug 6, 2010 |
| Vol.1 | 23 - 28 | Memorandum in Support of Motion for Summary Judgment filed Aug 6, 2010 |
| Vol.1 | 29 - 38 | Affidavit of Steven Cummings filed Aug 6, 2010 |
| Vol.1 | 39 - 42 | Joint Stipulation Re: Defendant Roger L. Stephens's Rule 56(f) Motion filed Aug 31, 2010 |
| Vol.1 | 43 - 45 | Defendant's Motion for Summary Judgment filed Sept 22, 2010 |
| Vol.1 | 46 - 65 | Defendant's Memorandum in Support of Motion for Summary Judgment filed Sept 22, 2010 |
| Vol.1 | 66 - 73 | Defendant's Response to Plaintiff's Motion for Summary Judgment filed Oct 13, 2010 |
| Vol.1 | 74 - 89 | Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment filed Oct 14, 2010 |
| Vol.1 | 90 - 100 | Defendant's Reply Memorandum in Support of Motion for Summary Judgment filed Oct 18, 2010 |
| Vol.1 | 101- 105 | Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment filed Oct 18, 2010 |
| Vol.1 | 106- 132 | Decision on Motion for Summary Judgment filed Jan 4, 2011 |
| Vol.1 | 133- 135 | Plaintiff's Motion to Reconsider filed Jan 18, 2011 |
| Vol.1 | 136- 140 | Motion for Order Awarding Attorney's Fees and Costs filed Jan 28, 2011 |

| | | |
|-------|----------|---|
| Vol.1 | 141- 143 | Memorandum of Fees and Costs filed Jan 28, 2011 |
| Vol.1 | 144- 156 | Affidavit of Randall C. Budge in Support of Fees and Costs filed Jan 28, 2011 |
| Vol.1 | 157- 165 | Affidavit of Brad H. Bearnson in Support of Fees and Costs filed Jan 28, 2011 |
| Vol.1 | 166- 187 | Plaintiff's Memorandum in Support of its Motion to Reconsider filed Feb 2, 2011 |
| Vol.2 | 188- 410 | Affidavit of Counsel in Support of Plaintiff's Motion to Reconsider filed Feb 2, 2011 |
| Vol.3 | 411- 413 | Motion to Strike Affidavit of Counsel filed March 3, 2011 |
| Vol.3 | 414- 422 | Memorandum in Support of Motion to Strike Affidavit of Counsel filed March 3, 2011 |
| Vol.3 | 423- 440 | Defendant's Response to Plaintiff's Motion to Reconsider filed March 9, 2011 |
| Vol.3 | 441- 444 | Defendant's Reply Memorandum in Support of Motion to Strike Affidavit of Counsel and Motion to Strike Affidavit of Nathan M. Olsen filed March 15, 2011 |
| Vol.3 | 445- 520 | First Amended Complaint filed Sept 13, 2011 |
| Vol.3 | 521- 546 | Defendant Northern Title's Answer to Plaintiff's First Amended Complaint & Third Party Complaint filed Oct 6, 2011 |
| Vol.3 | 547- 573 | Defendant Roger L. Stephen's Answer to Plaintiff's First Amended Complaint & Third Party Complaint filed Oct 6, 2011 |
| Vol.4 | 574- 649 | Second Amended Complaint filed Oct 24, 2011 |
| Vol.4 | 650- 675 | Stephens' Answer to Cummings' Second Amended Complaint & Stephens' Third Party Complaint filed Nov 2, 2011 |
| Vol.4 | 676- 677 | Defendant's Answer to Plaintiff's Complaint filed Nov 8, 2011 |

| | | |
|-------|-----------|--|
| Vol.4 | 678- 704 | Defendant Northern Title's Answer to Plaintiff's Second Amended Complaint & Third Party Complaint filed Nov 14, 2011 |
| Vol.4 | 705- 712 | Answer and Demand for Jury Trial filed Nov 30, 2011 |
| Vol.4 | 713- 720 | Plaintiff's Supplemental Disclosure of Witnesses filed March 13, 2012 |
| Vol.4 | 721- 727 | Northern Title Company of Idaho, Inc.'s Amended Witness Disclosure and Third Party Plaintiff Witness Disclosure filed March 15, 2012 |
| Vol.4 | 728- 737 | Memorandum Decision on Third Party Defendants' Motion for Summary Judgment Against Northern Title filed May 1, 2012 |
| Vol.4 | 738- 740 | Notice of Taking Deposition of Gregory Kelley filed May 11, 2012 |
| Vol.4 | 741- 743 | Amended Notice of Taking Deposition of Gregory Kelley filed May 11, 2012 |
| Vol.4 | 744- 746 | Defendant Northern Title's Second Motion in Limine with Request to file Over-Length Memorandum filed June 25, 2012 |
| Vol.5 | 747-1059 | Defendant Northern Title's Memorandum in Support of Second Motion in Limine filed June 25, 2012 |
| Vol.6 | 1060-1062 | Defendant Northern Title's Motion in Limine to Exclude Lenore Katri & Gregory Kelley filed July 2, 2012 |
| Vol.6 | 1063-1190 | Defendant Northern Title's Memorandum in Support to Exclude Lenore Katri & Gregory Kelley filed July 2, 2012 |
| Vol.6 | 1191-1193 | Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages filed July 3, 2012 |
| Vol.6 | 1194-1202 | Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion for Leave to Amend Complaint to allege Punitive Damages filed July 3, 2012 |

| | | |
|-------|-----------|--|
| Vol.6 | 1203-1211 | Plaintiff's Memorandum in Support of Motion for Leave to Amend Complaint to Allege Punitive Damages filed July 3, 2012 |
| Vol.6 | 1212-1214 | Notice of Hearing filed July 3, 2012 |
| Vol.6 | 1215-1232 | Stephens' Amended Answer to Cummings' Second Amended Complaint filed July 5, 2012 |
| Vol.6 | 1233-1237 | Memorandum Decision on Plaintiff's Motion to Exclude Northern Title's Expert and on Northern Title's Motion to Extend Disclosure Deadline for Experts filed July 6, 2012 |
| Vol.7 | 1238-1327 | Defendant Northern Title's Objection and Response to Plaintiff's Motion for Leave to Amend the Complaint filed July 12, 2012 |
| Vol.7 | 1328-1335 | Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley filed July 12, 2012 |
| Vol.7 | 1336-1339 | Affidavit of Nathan M. Olsen in Support of Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley filed July 12, 2012 |
| Vol.7 | 1340-1345 | Reply Brief Supporting Motion for Leave to Amend the Complaint to Allege Punitive Damages filed July 16, 2012 |
| Vol.7 | 1346-1377 | Memorandum in Reply to Plaintiff's Opposition to Excluding Lenore Katri and Gregory Kelley & Request to File Over-Length Reply Brief filed July 16, 2012 |
| Vol.7 | 1378-1447 | Reply for Northern Title's Second Motion in Limine & Request to file Over-Length Reply Brief filed July 16, 2012 |
| Vol.8 | 1448-1451 | Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Gregory Kelley filed July 24, 2012 |
| Vol.8 | 1452-1454 | Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Witness Greg Kelley filed July 24, 2012 |

| | | |
|-------|-----------|--|
| Vol.8 | 1455-1459 | Defendant Northern Title's Objection and Memorandum in Opposition to Plaintiff's Motion to Reconsider filed July 30, 2012 |
| Vol.8 | 1460-1462 | Defendant Stephens' Motion for Order Awarding Attorney Fees and Costs filed Aug 29, 2012 |
| Vol.8 | 1463-1470 | Defendant Stephens' Brief in Support of Motion for Attorneys' Fees and Costs filed Aug 29, 2012 |
| Vol.8 | 1471-1474 | Memorandum of Fees and Costs filed Aug 29, 2012 |
| Vol.8 | 1475-1503 | Affidavit of Randall C. Budge in Support of Motion for Fees and Costs filed Aug 29, 2012 |
| Vol.8 | 1504-1506 | Plaintiff's Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Sept 11, 2012 |
| Vol.8 | 1507-1532 | Plaintiff's Post Trial Brief filed Oct 3, 2012 |
| Vol.8 | 1533-1544 | Plaintiff's Memorandum in Support of Motion Objecting to And Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Oct 10, 2012 |
| Vol.8 | 1545-1570 | Defendant Northern Title Company of Idaho, Inc.'s Amended Post-Trial Brief filed Nov 8, 2012 |
| Vol.8 | 1571-1585 | Plaintiff's Reply to Defendant Northern Title's Post Trial Brief filed Nov 19, 2012 |
| Vol.8 | 1586-1587 | Final Judgment filed Jan 22, 2013 |
| Vol.8 | 1588-1635 | Memorandum Decision, Findings of Fact and Conclusions of Law filed Jan 22, 2013 |
| Vol.8 | 1636-1645 | Memorandum of Authority in Support of Plaintiff's Memorandum of Fees and Costs Against Defendant Northern Title filed Feb 5, 2013 |
| Vol.8 | 1646-1666 | Memorandum of Costs and Attorney's Fees and Affidavit of Nathan M. Olsen filed Feb 5, 2013 |
| Vol.9 | 1667-1668 | Northern Title Company of Idaho, Inc.'s Motion for Attorney Fees and Costs filed Feb 5, 2013 |

| | | |
|-------|-----------|--|
| Vol.9 | 1669-1670 | Defendant Stephens' Renewed Motion for Order Awarding Attorneys' Fees and Costs filed Feb 5, 2013 |
| Vol.9 | 1671-1679 | Northern Title Company of Idaho, Inc.'s Brief in Support of Motion for Attorney Fees and Costs filed Feb 5, 2013 |
| Vol.9 | 1680-1685 | Memorandum of Fees and Costs filed Feb 5, 2013 |
| Vol.9 | 1686-1713 | Second Affidavit of Brad H. Bearnson in Support of Motion for Fees and Costs filed Feb 5, 2013 |
| Vol.9 | 1714-1716 | Plaintiff's Motion Objecting to and Disallowing Defendant Northern Title's Attorneys Fees and Costs filed Feb 12, 2013 |
| Vol.9 | 1717-1730 | Plaintiff's Brief: In Response to Defendant Northern Title's Objection and Motion to Quash Plaintiff's Request for Costs and Attorneys' Fees; and in Support of Plaintiff's Motion Objecting to and Disallowing of Defendant Northern Title's Attorneys' Fees and Costs filed Feb 20, 2013 |
| Vol.9 | 1731-1741 | Plaintiff's Amended Memorandum in Support of Motion Objecting to and Disallowing Defendant Roger L. Stephens Attorneys' Fees and Costs filed Feb 20, 2013 |
| Vol.9 | 1742-1751 | Northern Title's Reply in Support of its Motion for Attorney Fees and Costs, and Response in Opposition to Plaintiff's Motion Objecting to Northern Title's Costs and Attorney Fees filed Feb 22, 2013 |
| Vol.9 | 1752-1772 | Notice of Appeal filed March 5, 2013 |
| Vol.9 | 1773-1778 | Decision on Motion to Intervene filed March 19, 2013 |
| Vol.9 | 1779-1801 | Northern Title Company of Idaho, Inc's Notice of Cross Appeal filed March 26, 2013 |
| Vol.9 | 1802-1815 | Decision on Costs and Fees filed April 4, 2013 |
| Vol.9 | 1816-1817 | Final Judgment on Costs and Fees filed April 12, 2013 |

| | | |
|-------|-----------|---|
| Vol.9 | 1818-1840 | Northern Title Company of Idaho, Inc's Amended Notice Of Cross Appeal filed April 25, 2013 |
| Vol.9 | 1841-1863 | Notice of Amended Appeal filed May 14, 2013 |
| Vol.9 | 1864-1866 | Certificate of Exhibits |
| Vol.9 | 1867 | Certificate of Clerk |
| Vol.9 | 1868 | Certificate of Service |
| Vol.9 | 1869-1870 | Notice of Lodging |

INDEX

| <u>VOL.</u> | <u>PAGE NO.</u> | <u>DOCUMENT</u> |
|-------------|-----------------|---|
| Vol.1 | 29 - 38 | Affidavit of Steven Cummings filed Aug 6, 2010 |
| Vol.1 | 144- 156 | Affidavit of Randall C. Budge in Support of Fees and Costs filed Jan 28, 2011 |
| Vol.1 | 157- 165 | Affidavit of Brad H. Bearnson in Support of Fees and Costs filed Jan 28, 2011 |
| Vol.2 | 188- 410 | Affidavit of Counsel in Support of Plaintiff's Motion to Reconsider filed Feb 2, 2011 |
| Vol.6 | 1194-1202 | Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion for Leave to Amend Complaint to allege Punitive Damages filed July 3, 2012 |
| Vol.7 | 1336-1339 | Affidavit of Nathan M. Olsen in Support of Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley filed July 12, 2012 |
| Vol.8 | 1452-1454 | Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Witness Greg Kelley filed July 24, 2012 |
| Vol.8 | 1475-1503 | Affidavit of Randall C. Budge in Support of Motion for Fees and Costs filed Aug 29, 2012 |
| Vol.4 | 741- 743 | Amended Notice of Taking Deposition of Gregory Kelley filed May 11, 2012 |
| Vol.1 | 9 - 20 | Answer and Third Party Complaint filed March 18, 2010 |
| Vol.4 | 705- 712 | Answer and Demand for Jury Trial filed Nov 30, 2011 |
| Vol.9 | 1867 | Certificate of Clerk |
| Vol.9 | 1864-1866 | Certificate of Exhibits |
| Vol.9 | 1868 | Certificate of Service |
| Vol.1 | 1 - 8 | Complaint filed July 29, 2009 |

| | | |
|-------|-----------|--|
| Vol.1 | 106- 132 | Decision on Motion for Summary Judgment filed Jan 4, 2011 |
| Vol.9 | 1773-1778 | Decision on Motion to Intervene filed March 19, 2013 |
| Vol.9 | 1802-1815 | Decision on Costs and Fees filed April 4, 2013 |
| Vol.4 | 676- 677 | Defendant's Answer to Plaintiff's Complaint filed Nov 8, 2011 |
| Vol.1 | 43 - 45 | Defendant's Motion for Summary Judgment filed Sept 22, 2010 |
| Vol.1 | 46 - 65 | Defendant's Memorandum in Support of Motion for Summary Judgment filed Sept 22, 2010 |
| Vol.8 | 1545-1570 | Defendant Northern Title Company of Idaho, Inc.'s Amended Post-Trial Brief filed Nov 8, 2012 |
| Vol.3 | 521- 546 | Defendant Northern Title's Answer to Plaintiff's First Amended Complaint & Third Party Complaint filed Oct 6, 2011 |
| Vol.4 | 678- 704 | Defendant Northern Title's Answer to Plaintiff's Second Amended Complaint & Third Party Complaint filed Nov 14, 2011 |
| Vol.5 | 747-1059 | Defendant Northern Title's Memorandum in Support of Second Motion in Limine filed June 25, 2012 |
| Vol.6 | 1063-1190 | Defendant Northern Title's Memorandum in Support to Exclude Lenore Katri & Gregory Kelley filed July 2, 2012 |
| Vol.6 | 1060-1062 | Defendant Northern Title's Motion in Limine to Exclude Lenore Katri & Gregory Kelley filed July 2, 2012 |
| Vol.7 | 1238-1327 | Defendant Northern Title's Objection and Response to Plaintiff's Motion for Leave to Amend the Complaint filed July 12, 2012 |
| Vol.8 | 1455-1459 | Defendant Northern Title's Objection and Memorandum in Opposition to Plaintiff's Motion to Reconsider filed July 30, 2012 |

| | | |
|-------|-----------|--|
| Vol.4 | 744 - 746 | Defendant Northern Title's Second Motion in Limine with Request to file Over-Length Memorandum filed June 25, 2012 |
| Vol.1 | 90 - 100 | Defendant's Reply Memorandum in Support of Motion for Summary Judgment filed Oct 18, 2010 |
| Vol.3 | 441- 444 | Defendant's Reply Memorandum in Support of Motion to Strike Affidavit of Counsel and Motion to Strike Affidavit of Nathan M. Olsen filed March 15, 2011 |
| Vol.1 | 66 - 73 | Defendant's Response to Plaintiff's Motion for Summary Judgment filed Oct 13, 2010 |
| Vol.3 | 423 - 440 | Defendant's Response to Plaintiff's Motion to Reconsider filed March 9, 2011 |
| Vol.3 | 547 - 573 | Defendant Roger L. Stephens' Answer to Plaintiff's First Amended Complaint & Third Party Complaint filed Oct 6, 2011 |
| Vol.8 | 1463-1470 | Defendant Stephens' Brief in Support of Motion for Attorneys' Fees and Costs filed Aug 29, 2012 |
| Vol.8 | 1460-1462 | Defendant Stephens' Motion for Order Awarding Attorney Fees and Costs filed Aug 29, 2012 |
| Vol.9 | 1669-1670 | Defendant Stephens' Renewed Motion for Order Awarding Attorneys' Fees and Costs filed Feb 5, 2013 |
| Vol.8 | 1586-1587 | Final Judgment filed Jan 22, 2013 |
| Vol.9 | 1816-1817 | Final Judgment on Costs and Fees filed April 12, 2013 |
| Vol.3 | 445 - 520 | First Amended Complaint filed Sept 13, 2011 |
| Vol.1 | 39 - 42 | Joint Stipulation Re: Defendant Roger L. Stephens's Rule 56(f) Motion filed Aug 31, 2010 |
| Vol.4 | 728 - 737 | Memorandum Decision on Third Party Defendants' Motion for Summary Judgment Against Northern Title filed May 1, 2012 |
| Vol.7 | 1233-1237 | Memorandum Decision on Plaintiff's Motion to Exclude Northern Title's Expert and on Northern Title's Motion to Extend Disclosure Deadline for Experts filed July 6, 2012 |

| | | |
|-------|-----------|--|
| Vol.8 | 1588-1635 | Memorandum Decision, Findings of Fact and Conclusions of Law filed Jan 22, 2013 |
| Vol.7 | 1346-1377 | Memorandum in Reply to Plaintiff's Opposition to Excluding Lenore Katri and Gregory Kelley & Request to File Over-Length Reply Brief filed July 16, 2012 |
| Vol.1 | 23 - 28 | Memorandum in Support of Motion for Summary Judgment filed Aug 6, 2010 |
| Vol.3 | 414 - 422 | Memorandum in Support of Motion to Strike Affidavit of Counsel filed March 3, 2011 |
| Vol.8 | 1636-1645 | Memorandum of Authority in Support of Plaintiff's Memorandum of Fees and Costs Against Defendant Northern Title filed Feb 5, 2013 |
| Vol.8 | 1646-1666 | Memorandum of Costs and Attorney's Fees and Affidavit of Nathan M. Olsen filed Feb 5, 2013 |
| Vol.1 | 141 - 143 | Memorandum of Fees and Costs filed Jan 28, 2011 |
| Vol.8 | 1471-1474 | Memorandum of Fees and Costs filed Aug 29, 2012 |
| Vol.9 | 1680-1685 | Memorandum of Fees and Costs filed Feb 5, 2013 |
| Vol.1 | 136 - 140 | Motion for Order Awarding Attorney's Fees and Costs filed Jan 28, 2011 |
| Vol.1 | 21 - 22 | Motion for Summary Judgment filed Aug 6, 2010 |
| Vol.3 | 411- 413 | Motion to Strike Affidavit of Counsel filed March 3, 2011 |
| Vol.9 | 1818-1840 | Northern Title Company of Idaho, Inc.'s Amended Notice Of Cross Appeal filed April 25, 2013 |
| Vol.4 | 721 - 727 | Northern Title Company of Idaho, Inc.'s Amended Witness Disclosure and Third Party Plaintiff Witness Disclosure filed March 15, 2012 |
| Vol.9 | 1671-1679 | Northern Title Company of Idaho, Inc.'s Brief in Support of Motion for Attorney Fees and Costs filed Feb 5, 2013 |

| | | |
|-------|-----------|--|
| Vol.9 | 1667-1668 | Northern Title Company of Idaho, Inc.'s Motion for Attorney Fees and Costs filed Feb 5, 2013 |
| Vol.9 | 1779-1801 | Northern Title Company of Idaho, Inc.'s Notice of Cross Appeal filed March 26, 2013 |
| Vol.9 | 1742-1751 | Northern Title's Reply in Support of its Motion for Attorney Fees and Costs, and Response in Opposition to Plaintiff's Motion Objecting to Northern Title's Costs and Attorney Fees filed Feb 22, 2013 |
| Vol.9 | 1841-1863 | Notice of Amended Appeal filed May 14, 2013 |
| Vol.9 | 1752-1772 | Notice of Appeal filed March 5, 2013 |
| Vol.6 | 1212-1214 | Notice of Hearing filed July 3, 2012 |
| Vol.9 | 1869-1870 | Notice of Lodging filed May 20, 2013 |
| Vol.4 | 738 - 740 | Notice of Taking Deposition of Gregory Kelley filed May 11, 2012 |
| Vol.9 | 1731-1741 | Plaintiff's Amended Memorandum in Support of Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Feb 20, 2013 |
| Vol.9 | 1717-1730 | Plaintiff's Brief: In Response to Defendant Northern Title's Objection and Motion to Quash Plaintiff's Request for Costs and Attorneys' Fees; and in Support of Plaintiff's Motion Objecting to and Disallowing of Defendant Northern Title's Attorneys' Fees and Costs filed Feb 20, 2013 |
| Vol.1 | 166 - 187 | Plaintiff's Memorandum in Support of its Motion to Reconsider filed Feb 2, 2011 |
| Vol.6 | 1203-1211 | Plaintiff's Memorandum in Support of Motion for Leave to Amend Complaint to Allege Punitive Damages filed July 3, 2012 |
| Vol.8 | 1533-1544 | Plaintiff's Memorandum in Support of Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Oct 10, 2012 |

| | | |
|-------|-----------|--|
| Vol.6 | 1191-1193 | Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages filed July 3, 2012 |
| Vol.8 | 1504-1506 | Plaintiff's Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Sept 11, 2012 |
| Vol.9 | 1714-1716 | Plaintiff's Motion Objecting to and Disallowing Defendant Northern Title's Attorneys Fees and Costs filed Feb 12, 2013 |
| Vol.1 | 133 - 135 | Plaintiff's Motion to Reconsider filed Jan 18, 2011 |
| Vol.8 | 1448-1451 | Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Gregory Kelley filed July 24, 2012 |
| Vol.8 | 1507-1532 | Plaintiff's Post Trial Brief filed Oct 3, 2012 |
| Vol.1 | 101 - 105 | Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment filed Oct 18, 2010 |
| Vol.8 | 1571-1585 | Plaintiff's Reply to Defendant Northern Title's Post Trial Brief filed Nov 19, 2012 |
| Vol.1 | 74 - 89 | Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment filed Oct 14, 2010 |
| Vol.7 | 1328-1335 | Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley filed July 12, 2012 |
| Vol.4 | 713 - 720 | Plaintiff's Supplemental Disclosure of Witnesses filed March 13, 2012 |
| Vol.7 | 1340-1345 | Reply Brief Supporting Motion for Leave to Amend the Complaint to Allege Punitive Damages filed July 16, 2012 |
| Vol.7 | 1378-1447 | Reply for Northern Title's Second Motion in Limine & Request to File Over-Length Reply Brief filed July 16, 2012 |
| Vol.9 | 1686-1713 | Second Affidavit of Brad H. Bearnson in Support of Motion for Fees and Costs filed Feb 5, 2013 |
| Vol.4 | 574 - 649 | Second Amended Complaint filed Oct 24, 2011 |

| | | |
|-------|-----------|--|
| Vol.6 | 1215-1232 | Stephens' Amended Answer to Cummings' Second Amended Complaint filed July 5, 2012 |
| Vol.4 | 650 - 675 | Stephens' Answer to Cummings' Second Amended Complaint & Stephens' Third Party Complaint filed Nov 2, 2011 |

Nathan M. Olsen, ISB No. 7373
BEARD ST. CLAIR GAFFNEY P.A.
2105 Coronado Street
Idaho Falls, ID 83404-7495
Telephone: (208) 523-5171
Facsimile: (208) 529-9732
email: nathan@beardstclair.com

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2011 FEB -2 AM 11:12

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

Attorneys for Plaintiff

**DISTRICT COURT SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY IDAHO**

STEVEN CUMMINGS, an individual
residing in Montana

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah, JOHN DOES
I-X

Defendants.

Case No.: CV-09-183

AFFIDAVIT OF COUNSEL IN
SUPPORT OF PLAINTIFF'S MOTION
TO RECONSIDER

STATE OF IDAHO

County of Bonneville

ss.

Nathan M. Olsen, having been duly sworn on oath, deposes and states:

1. I am an attorney with the law firm, Beard St. Clair Gaffney PA, and counsel of record for Plaintiff, Steven Cummings.
2. I am competent to testify and do so from personal knowledge.
3. Attached as Exhibit 1 is a true and correct copy of the July 19, 2008, affidavit signed by Curtis Baum of "Three Bar Ranches, Inc." In addition, as a part of Exhibit 1 is a letter from me to Randy Budge dated July 21, 2008, which attached the Baum affidavit.
4. Attached as Exhibit 2 is a true and correct copy of the written transcript and exhibits of Dorothy Julian's deposition taken on October 8, 2010.

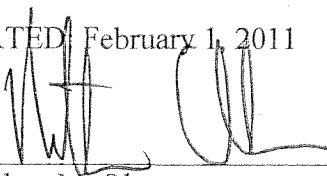
5. Attached as Exhibit 3 is a true and correct copy of June 18, 2008, e-mail contained within the records of Northern Title Company in regard to the Cummings/Stephens transaction.

6. On or about May 30, 2008, on behalf of Mr. Cummings I sent *separate* demand letters to Roger Stephens, Northern Title Company and Exit Realty. (See Exhibit 17 to Cummings deposition for the full copies of correspondence exchanged in 2008.)

Northern Title and Exit Realty did not respond to the letters. Instead, I received a letter from Randy Budge dated June 11, 2008, representing the seller Roger Stephens. Attached to Mr. Budge's letter is what is alleged to be a copy of the Three Bar Ranches purchase and sale agreement (PSA) that had been assigned to Mr. Cummings (a copy of which was attached as exhibit 3 to Cummings deposition). The alleged PSA sent by Budge contains an "Exhibit A" which is alleged to be the addendum attached to the PSA containing the legal description. The exhibit contains exception language below "Parcel A." However, this "Exhibit A" is different than the PSA addendum that Mr. Cummings received prior to closing the sale (a copy of which was submitted as exhibits 19 and 20 to Mr. Cummings' deposition.)

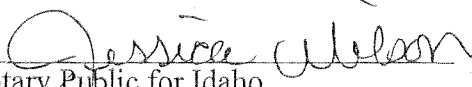
7. The actual addendum, as confirmed by the fax headers and Mr. Cummings initials, contained no exception language below "Parcel A." For comparison purposes, a true and correct copy of these two addendums is attached as Exhibit 4. Also included as a part of Exhibit 4 is a letter from me to opposing counsel pointing out the differences between the two addendums.

DATED February 1, 2011

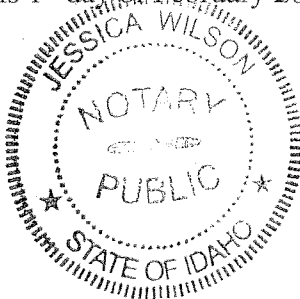


Nathan M. Olsen

Subscribed and sworn to before me on this 1st day of February 2011.



Notary Public for Idaho
Residing at: Idaho Falls, ID
My Commission Expires: 9/11/14
(SEAL)



CERTIFICATE OF SERVICE

I certify that I am a licensed attorney in the State of Idaho and that on February 1, 2011 I served a true and correct copy of the *AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO RECONSIDER* upon the following by the method of delivery designated:

Randall Budge
Racine Olson Nye Budge & Bailey
PO Box 1391
Pocatello, ID 83204-1391
Fax: (208) 232-6109

☒ US Mail ☐ Hand delivered ☐ Facsimile

Brad Bearnson
Bearnson & Peck
399 N. Main Street, Ste 300
Logan, UT 84321

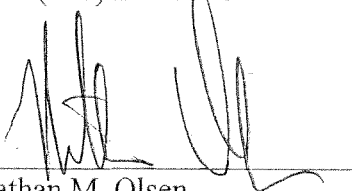
☒ US Mail ☐ Hand delivered ☐ Facsimile

Bear Lake County Courthouse
PO Box 190
Paris, ID 83261
Fax: (208) 945-2780

☒ US Mail ☐ Hand delivered ☐ Facsimile

Honorable David C. Nye
Bannock County Chambers
Bannock County Courthouse
624 E. Center
Pocatello, ID 83201
Fax: (208) 236-7418

☒ US Mail ☐ Hand delivered ☐ Facsimile


Nathan M. Olsen
Of Beard St. Clair Gaffney PA
Attorneys for the Plaintiff

Affidavit

State of Idaho

ss.


County of Bonneville

Dr. Curtis Baum, being first duly sworn, states:

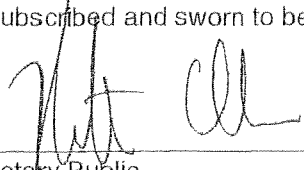
1. I reside at Vladivostok, Russia.
2. I am competent to testify. All matters stated in this affidavit are based upon my personal knowledge or upon my information and belief following a reasonable investigation.
3. I am an officer and authorized agent for Three Bar Ranches, Inc.(TBR)
4. In July of 2007, TBR entered into a "Real Estate Purchase and Sale Agreement" with Roger and Barbara Stephens for a ranch located near Montpelier, Idaho. A true and correct copy of that agreement is attached to this affidavit as "Exhibit A." This agreement included a description of the property as "Addendum One," a true and correct copy of which is attached to this affidavit as "Exhibit B."
5. Prior to entering into the agreement, Evan Skinner, then the seller's agent with Exit Realty of Bear Lake, showed me the property. He represented the property as 360 acres consisting of parcels on both sides of Highway 30. I confirmed the size and location of the property with the Department of Agriculture's Soil and Water Conservation district office located in Montpelier, Idaho.
6. I was also provided a title commitment from Northern Title Company which contained a property description exactly the same as the description that was included with the purchase agreement. A true and correct copy of that document is attached with this affidavit as "Exhibit C."
7. After signing the purchase agreement, I became aware through Mr. Skinner of a gentleman by the name of Steven Cummings who was interested in purchasing TBR's contract with the Stephens. After some negotiation through Mr. Skinner, I agreed to sell the purchase agreement to Mr. Cummings for \$50,000. A true and correct copy of TBR's assignment agreement with Mr. Cummings is attached as "Exhibit D." Other than the terms listed in the assignment agreement, Mr. Cummings obtained all of the obligations, rights and benefits in TBR's purchase agreement with the Stephens.

8. At no point before or after the assignment agreement with Mr. Cummings did I agree or even discuss eliminating the property east of Highway 30 from the sale with any relevant party, including agents from Exit Realty of Bear Lake, the sellers, Northern Title Company, or Mr. Cummings.

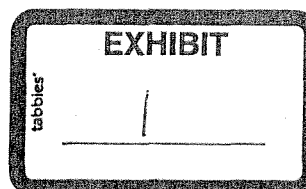
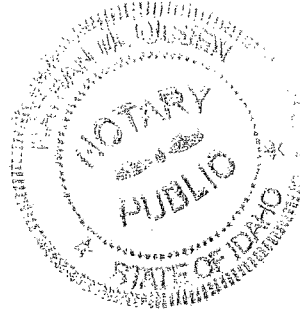
Dated: 19 day of July, 2008.


Dr. Curtis Baum, Three Bar Ranches, Inc.

Subscribed and sworn to before me this 19th of July, 2008.


Notary Public
Residing at: Idaho Falls
Commission expires: 1/26/14

(Seal)



Affd PTH moth Reconsider

191

Beard
St. Clair



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

ID# ES070207 BDATE 7-20-07LISTING AGENCY Exit Realty of B.L.

Office Phone # _____

Fax # _____

Listing Agent Dorothy Ralls E-Mail _____

Phone # _____

SELLING AGENCY Exit Realty of B.L.Office Phone # 817-3200Fax # 817-3203Selling Agent Edan Spence E-Mail _____

Phone # _____

1. BUYER: Three Bar Ranches, Inc.

(Hereinafter called

"BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"

COMMONLY KNOWN AS Stephens RanchCity MontpelierBear Lake County, ID, Zip _____legally described as: See Addendum One

OR Legal Description Attached as addendum # _____ (Addendum must accompany original offer.)

2. \$ 700,000 PURCHASE PRICE: Seven Hundred Thousand DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

\$ 100,000 (A). EARNEST MONEY: BUYER hereby deposits One Thousand DOLLARS asEarnest Money evidenced by: ☐ cash ☒ personal check ☐ cashier's check ☐ note (due date): _____☐ other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account ☐ upon receipt, or ☐ upon acceptance by all parties and shall be held by: ☐ Listing Broker ☐ Selling Broker☐ other _____ for the benefit of the parties hereto. The responsible Broker shall be _____(B). ALL CASH OFFER: ☒ NO ☐ YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with

"0" (ZERO.) IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY.

BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

(C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:

☐ FIRST LOAN of \$ _____ not including mortgage insurance, through ☐ FHA, ☐ VA, ☐ CONVENTIONAL, ☐ IFHA,☐ RURAL DEVELOPMENT, ☐ OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: ☐ Fixed Rate☐ Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s).Any reduction in points shall first accrue to the benefit of the ☐ BUYER ☐ SELLER ☐ Divided Equally ☐ N/A.☐ SECOND LOAN of \$ _____ with interest not to exceed _____ % for a period of _____ year(s) at: ☐ Fixed Rate☐ Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the ☐ BUYER ☐ SELLER ☐ Divided Equally ☐ N/A.

LOAN APPLICATION: BUYER ☐ has applied ☐ shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____ business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER.

FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees required by FHA or VA.

\$ 202,000 (D). ADDITIONAL FINANCIAL TERMS:☒ Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).☐ Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.

Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.

\$ 202,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s) shall be adjusted at closing of escrow in: ☐ Cash ☐ Other: _____

BUYER'S Initials (CSB) Date 7/2/07SELLER'S Initials (AL) Date 7-5-07

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 1 of 6 JULY 2006 EDITION

Copy

Affd Plntf Motn Reconsider

192 EXHIBIT

A

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 6 JULY, 2008 EDITION

PROPERTY ADDRESS: 3700 S. Knoch ID#: ES070207B**9. INSPECTION:**

(A). BUYER chooses ☒ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip section 9C. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 10 business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B). FHA INSPECTION REQUIREMENT, If applicable: "For Your Protection: Get a Home Inspection", HUD 92664-CN must be signed on or before execution of this agreement.

(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 5 business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER'S inspection contingency.

3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 5 business days that they will not continue with the transaction and will receive their Earnest Money back.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. LEAD PAINT DISCLOSURE: The subject property ☒ is ☐ is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of SELLER'S Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than or the contingency will terminate, (d) that BUYER hereby ☒ waives ☐ does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property Disclosure Form" or other acceptable form prior to signing this Agreement: ☐ Yes ☐ No ☐ N/A

13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's. ☐ Yes ☒ No

14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents: ☐ Yes ☐ No ☐ N/A Association fees/dues are \$ per ☐ BUYER ☐ SELLER ☐ N/A to pay Homeowner's Association SET UP FEE of \$ and/or property TRANSFER FEES of \$ at closing.

15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

BUYER'S Initials (JS) () Date 7/2/07 SELLER'S Initials (RS) (BS) Date 7-5-07

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 6 JULY, 2008 EDITION

Hftd Plntf Moth Reconsider

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 5 of 6 JULY, 2006 EDITION

PROPERTY ADDRESS: Stephen's RanchID#: ES070207B

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☐ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☒ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials (BS) Date 7/02/07 SELLER'S Initials (AL) Date 7-2-07

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 5 of 6 JULY, 2006 EDITION

Affd Plntf Motn Reconsider

194

"EXHIBIT A"

EXHIBIT

Addendum One

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.27 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 35' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.34 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 94.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 89 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 99 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 90 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Initial

Affd Plntf Motn Reconsider

195

EXHIBIT

Fax: 2088470081

Jul 26 2007 12:19

P.02

ALTA Commitment (8/12/05)

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by

stewart
title guaranty company

Stewart Title Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, commits to issue the policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.

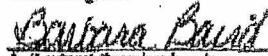

Chairman of the Board


title guaranty company




President

Countersigned:


Authorized Countersignature

Northern Title Co. of Idaho
Company Name

Preston, ID
City, State

Fax: 2088470881

Jul 26 2007 12:19

P.04

Closing/Escrow inquiries to:
LORI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA BAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTHL-1183

1. Effective Date: May 30, 2007 @ 1:00 PM

2. Policy or policies to be issued:

A. ALTA Owner's (6/17/06)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount: \$800,000.00

Premium: \$2,350.00

B. ALTA Loan (6/17/06)

Coverage

Proposed Insured:

Amount: \$0.00

Premium: \$0.00

C. Endorsements: \$0.00

3. The estate or interest in the land described in the Commitment and covered herein is:
PRR SIMPLE

4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L.
STEPHENS FAMILY TRUST5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is
described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS: BEAR LAKE COUNTY

"EXHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.20 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 89 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Fax: 2086470881

Jul 26 2007 12:19

P.07

SCHEDULE B - SECTION II

Order No. NTRL-1183

SPECIAL EXCEPTIONS:

1. Taxes for the year 2007 are a lien, not yet due or payable.

Taxes for the year 2006 have been paid in the amount of \$183.54.

Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.

Taxes for the year 2006 have been paid in the amount of \$1,134.00.

Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.

Taxes for the year 2006 have been paid in the amount of \$135.10.

Tax Serial No. 3168

2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL BASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
5. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 30
- | | |
|-----------------|--------------------|
| RECORDED: | MAY 22, 1956 |
| INSTRUMENT NO.: | 71884 |
| RECORDED: | AUGUST 1, 1956 |
| INSTRUMENT NO.: | 72172 |
| RECORDED: | SEPTEMBER 20, 1956 |
| INSTRUMENT NO.: | 72343 |
| RECORDED: | NOVEMBER 15, 1960 |
| INSTRUMENT NO.: | 79310 |

(Continued)

Affd Plntf Motn Reconsider

199

Fax: 2080470881

Jul 26 2007 12:19

P.09

SCHEDULE B - SECTION II

Order No. NTEL-1183

SPECIAL EXCEPTIONS CONTINUED:**RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY**RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124283**ASSIGNMENT OF OIL AND GAS LEASE**RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124284**10. RIGHT OF WAY EASEMENT**RECORDED: MAY 26, 1914
INSTRUMENT NO.: 10835, 10836, 10837 & 10838**11. OFFICIAL MINUTES**RECORDED: MARCH 7, 1997
INSTRUMENT NO.: 166238

NOTE: The policy of title insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its insurance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC.
ROGER L. STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction fails to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

Barbara Baud
Examiner

Affid Plntf Motn Reconsider

200

RE-11 ADDENDUM JULY 2004 EDITION PAGE 1 OF 1



RE-11 ADDENDUM # _____ (1,2,3, etc.)

Date: July 30, 07

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement.

("Addendum" means that the information below is added material for the agreement (such as facts or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: 7/2/07 # ES07027B

ADDRESS: Stephens Ranch n. of Montpelier

BUYER(S): Steven Cummings

SELLER(S): Three Bar Ranches LLC

The undersigned parties hereby agree as follows:

Assignment of The Purchase and sales Agreement from Rodger Stevens to Three Bar Ranches LLC TO Steven Cummings Purchase and sales agreement Dated 7-2-07 To # ES07027B. All terms and purchase price to remain the same except Steven Cummings TO pay \$850,000. with \$50,000 going to Three Bar Ranches And The Balance TO pay off to Rodger Stevens All included items & excluded items to remain the same. All money paid to be cash at closing. Closing by 8-3-07

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER:

Date: 7-30-07

BUYER:

Date:

SELLER:

Date:

SELLER:

Date: 8/01/07

This form is printed and distributed by the Idaho Association of REALTORS® Inc. This form has been designed for and is provided only for the real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. ©Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

RE-11 ADDENDUM JULY 2004 EDITION PAGE 1 OF 1

Printed Using Professional Computer Forms Co. (16 Line Form) Editions 08/04

EXHIBIT D

Affid Plntf Motn Reconsider

201



Attorneys

Attorneys admitted in
Idaho Oregon Washington Wyoming

Nathan M. Olsen

2105 Coronado Street • Idaho Falls, ID 83404

Phone (208) 557-5209 • Fax (208) 525-1794

Email nathan@beardstclair.com

July 21, 2008

Randy Budge
Racine Olsen Nye Budge & Bailey Chartered
201 East Center Street
P.O. Box 1391
Pocatello, Idaho 83204

Re: Cummings v. Stephens

Dear Randy,

I am responding to your June 11, 2008, letter.

In response to your letter, and to assure you that he was not "contriving claims after the fact, hoping to take unfair advantage of the Stephens," my client requested that I meet Dr. Curtis Baum, the representative of Three Bar Ranches, Inc. (TBR) to receive further confirmation of his (Mr. Cummings's) claims in this transaction. As you recall, Cummings purchased TBR's purchase and sale contract with the Stephens. This meeting with Dr. Baum took some time because he is actually now living in Russia.

To that end, please find attached an affidavit from Dr. Baum that confirms the purchase and sale agreement, the property description, the title commitment, the assignment of that agreement, and that there were no agreements or discussions about eliminating acreage east of highway 30. In essence, Mr. Baum's sworn statement supports all of my client's assertions in this matter.

Please keep in mind that *prior to closing of the sale* on August 1, Mr. Cummings negotiated this transaction almost exclusively through the Stephens' real estate agent Evan Skinner of Exit Realty of Bear Lake. Cummings contact with agent Dorothy Ralls was minimal, with only one initial substantive conversation. The documents that I sent to you with my original letter – including the property description absent the east of highway exclusion language – were transmitted to Cummings by Mr. Skinner's office. My clients' decisions in this matter, including the \$850,000 that he tendered for the purchase of this property were based on his good faith negotiations with the Stephens through their agent Mr. Skinner. Your clients cannot attempt to redefine the terms of that agreement *ex post*. Of further note, my client was not shown a copy of the warranty deed that does contain the exclusion language until after the transaction had been closed. Moreover, neither your clients, the title company nor any other agents notified Mr. Cummings of the so called "corrections" to the deed. Please note that the property description on that deed contains *only* the initials of the sellers.

At best, my client hopes that these problems were caused by misunderstandings between the Stephens and their agents. Nevertheless, whether there were miscommunications that occurred between Mr. Skinner and/or Northern Title and the Stephens are of no concern to my client. My client is entitled to the benefit of his bargain with the Stephens. He is entitled to the property as

Affid Plaff Motn Reconsider www.beardstclair.com 202

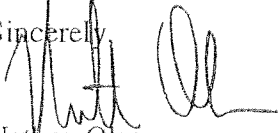
July 22, 2008

it was described in the purchase agreement he bought from TBR and as described in the title commitment. This legal description does not exclude property on the east side of highway 30.

Mr. Cummings is not a person that relishes the idea of pursuing litigation. This attitude explains why he has taken this amount of time to pursue his legal options. He would still like to provide the Stephens the opportunity to settle this matter outside of court. To that end, Mr. Cummings simply requests that Stephens convey the property as described in the contract and cover his losses and costs for dealing with this matter. If this approach presents a problem or undue complications, my client would also be willing to entertain a fair amount of monetary compensation.

However, if the Stephens turn down this opportunity to settle matters, my client is prepared to move forward with aggressive litigation and all possible claims to protect his rights. Please let me know what your clients' intentions are within 10 days receipt of this letter.

Sincerely,



Nathan Olsen

Attachments

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an)

individual residing in)

Montana,)

Plaintiff,)

vs.) Case No.

ROGER L. STEPHENS, an) CV-09-183

individual residing in)

Providence, Utah; JOHN)

DOES I-X,)

Defendants.)

COPY

EXHIBITS BOUND
SEPARATELY

VIDEOTAPED DEPOSITION OF DOROTHY JULIAN

OCTOBER 8, 2010

REPORTED BY:

RODNEY FELSHAW, C.S.R. No. SRT-969

Notary Public

EXHIBIT

tabbies

2

M & M Court
Reporting
Service, Inc.

Since 1970
Registered Professional Reporters

■ BOISE, ID
208-345-9611

■ POCATELLO, ID
208-233-0816

■ COEUR D'ALENE, ID
208-765-1700

■ TWIN FALLS, ID
208-734-1700

■ ONTARIO, OR
541-881-1700

■ SPOKANE, WA
509-455-4515

■ HAILEY, ID
208-578-1049

www.idahocourtreporting.com 000001

Affid Plntf Motn Reconsider

204

COPY

000002

Affid Plntff Motn Reconsider

205

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an)
individual residing in)
Montana,)
Plaintiff,)
vs.) Case No.
ROGER L. STEPHENS, an) CV-09-183
individual residing in)
Providence, Utah; JOHN)
DOES I-X,)
Defendants.)

VIDEOTAPED DEPOSITION OF DOROTHY JULIAN
OCTOBER 8, 2010

REPORTED BY:
RODNEY FELSHAW, C.S.R. No. SRT-969
Notary Public

INDEX

| | PAGE |
|--|------|
| TESTIMONY OF DOROTHY JULIAN | |
| Examination by Mr. Bearson | 5 |
| Examination by Mr. Olsen | 42 |
| EXHIBITS | |
| No. 21 Notice of deposition. | 78 |
| No. 22 Dorothy Julian affidavit. | 78 |
| No. 23 Lori Thornock affidavit. | 78 |
| No. 24 Evan Skinner affidavit. | 78 |
| No. 25 Real Estate Purchase and Sale Agreement. | 78 |
| No. 26 September 28, 2010 letter. | 78 |
| No. 27 Exclusive seller representation agreement. | 42 |
| No. 28 June 18, 2008 letter. | 42 |
| No. 29 June 13, 2008 letter. | 42 |

1 THE VIDEOTAPED DEPOSITION OF DOROTHY
2 JULIAN was taken on behalf of the Defendants at
3 the offices of Northern Title, 689 North Fourth,
4 Suite 1, Montpelier, Idaho, commencing at 11:00
5 a.m. on October 8, 2010, before Rodney Felshaw,
6 Certified Shorthand Reporter and Notary Public
7 within and for the State of Idaho, in the
8 above-entitled matter.

APPEARANCES:

10 For the Plaintiff:
11 BEARD, ST. CLAIR, GAFFNEY, PA
12 BY MR. NATHAN M. OLSEN
13 2105 Coronado Street
14 Idaho Falls, ID 83404-7495

16 For the Defendants:
17 BEARNSON & PECK, L.C.
18 BY MR. BRAD H. BEARNSON
19 399 North Main, Suite 300
20 Logan, UT 84321

23 Also present: Paul Davis, Mitch Poppa.
24
25

1 DOROTHY JULIAN,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:
4
5 VIDEOGRAPHER: We will now go on the
6 record. I am Mitch Poppa of the John Young
7 Group, 2635 Fairway Drive, Pocatello, Idaho. I
8 will be the videographer for this deposition.
9 The court reporter is Rod Felshaw of M&M Court
10 Reporting.

11 We are here today, October 8th, 2010,
12 at approximately 11 a.m. at the Northern Title
13 Company, 680 North Fourth, suite C, Montpelier
14 Idaho, or suite one, 83254, to videotape the
15 deposition of Dorothy Julian. This deposition is
16 being taken at the instance of the defendant in
17 the District Court of the Sixth Judicial District
18 of the State of Idaho, in and for the County of
19 Bear Lake, in the matter of Steven Cummings, an
20 individual living in Montana, plaintiff, versus
21 Robert L. Stephens, an individual living in
22 Providence. Excuse me, Roger Stephens, an
23 individual living in Providence, Utah, and John
24 Does, one through 10, defendants, case number
25 CV-09-183.

Affid Plntf Motn Reconsider

206

1 Will the attorneys for the parties
2 please introduce themselves and state who they
3 represent. Then the court reporter will swear in
4 the witness.

5 MR. BEARNSON: Brad Bearnson for Roger
6 Stephens.

7 MR. OLSEN: Nathan Olsen representing
8 Steven Cummings.

9 DOROTHY JULIAN,
10 being first duly sworn to tell the truth relating
11 to said cause, testified as follows:

12 MR. OLSEN: I would just like to make a
13 note for the record that we have a representative
14 of Northern Title here in the room. They've also
15 been present in previous depositions. In the
16 past Mr. Bearnson has indicated that he also
17 represents Northern Title, so I put that on the
18 record because it's pretty clear that Northern
19 Title is a party in this action. So we'll bring
20 that before the judge at the appropriate time.
21 Thank you.

22 EXAMINATION

23 BY MR. BEARNSON:

24 Q. Okay. Can I get you to state your
25 name.

1 A. I'm Dorothy Julian.

2 Q. And where do you live?

3 A. I live now in Eagle, Idaho.

4 Q. Okay. Prior to your residing in
5 Eagle, Idaho, where did you live?

6 A. I lived here in Montpelier at 123
7 Valley View Drive.

8 Q. Okay. You are being deposed today for
9 purposes of this litigation between Mr. Cummings
10 and the Stephens, do you understand that?

11 A. Yes.

12 Q. You previously were sworn. We'll be
13 asking you a bunch of questions today. It's
14 important that you understand my questions, so if
15 ever you don't understand a question, prior to
16 responding if you would just ask for whatever
17 clarification you need, okay?

18 A. Okay.

19 Q. And if you need to take a break at any
20 time let us know.

21 A. Thank you.

22 Q. While you were residing here in
23 Montpelier, were you employed?

24 A. Yes. I was an associate broker in
25 real estate at Exit Realty.

1 Q. Okay.

2 A. Well, I had a home office and several
3 other offices, but at the time of this matter
4 that's where I was.

5 Q. You're talking about in 2007?

6 A. Uh-huh.

7 Q. How long have you been a realtor?

8 A. I was licensed in 1978 and I was -- as
9 a sales agent, and I was licensed as a broker in
10 1981.

11 Q. Have you acted, then, as both a real
12 estate salesperson and a broker?

13 A. Yes. I had my own office for 10
14 years.

15 Q. Okay. And in 2007 you were acting as
16 an associate broker and salesperson for Exit
17 Realty?

18 A. Correct.

19 Q. And that was a brokerage that handled
20 the transaction between Mr. Cummings and Mr.
21 Stephens; is that correct?

22 A. Yes.

23 Q. So in that respect do you have a
24 memory or a recollection of that transaction?

25 A. Yes.

1 Q. You previously were asked to give an
2 affidavit. You previously gave an affidavit in
3 this matter, do you recall that?

4 A. Yes.

5 Q. We'll be reviewing that with you at
6 some point. Tell me, 2007 has been three years
7 ago now. How is it that you have a recollection
8 of this particular transaction?

9 A. I guess because there's been some
10 problems with it, with supposedly a lawsuit. I've
11 tried to remember things. I can't say exact dates
12 on some things because the papers that I had in
13 Montpelier were lost --

14 Q. Okay.

15 A. -- moving up to Eagle, which I just
16 moved there a year ago.

17 Q. Okay. Very good. I'm going to be
18 showing some documents here, one of which is your
19 affidavit which we have marked as exhibit 21. Do
20 you see that?

21 A. Yes.

22 Q. If you would take a moment and kind of
23 leaf through it and tell me if that's in fact the
24 affidavit you gave in this matter? Excuse me.
25 Exhibit 21 actually is a notice of your

1 deposition. That's your deposition that you are
 2 appearing today under?
 3 A. Yes.
 4 Q. Exhibit 22 is your affidavit. We'll
 5 get these straight here.
 6 A. Right.
 7 Q. And that's the affidavit you
 8 previously gave in this matter?
 9 A. Right.
 10 Q. And does it bear your signature? If
 11 you'll turn to page four here, is that your
 12 signature?
 13 A. Yes, that is.
 14 Q. And at the time you made this you
 15 tried to be as accurate and complete as you could?
 16 A. As well as I could remember.
 17 Q. Okay. Very good. I want to, if you
 18 could, go back to the time that the Stephens'
 19 property was listed for sale. Do you recall that?
 20 A. Yes.
 21 Q. And who did you speak with in regard
 22 to your listing the property?
 23 A. To Roger.
 24 Q. Okay.
 25 A. I've talked to him several times

1 through the years. I've known him since -- he was
 2 a few years older than me in school and we rode
 3 the school bus to high school here. Sometimes he
 4 would think of selling it, but no listing was
 5 done. But when I met with him on this he was
 6 getting older and decided -- it was a hard thing
 7 for him to sell.
 8 Q. Do you recall about when that was in
 9 2007?
 10 A. It seems like when I met with him it
 11 was kind of the first of the year.
 12 Q. Okay. And did he approach you or did
 13 you approach him on the sale?
 14 A. Well, I used to see him sometimes out
 15 at the Ranch Hand when they would come up to check
 16 on their place and I would be out there eating.
 17 And it would just -- sometimes he would say, well,
 18 are you ready to sell my place, you know. I got
 19 quite serious about it and asked him if I could
 20 come over and meet with him. He called me then
 21 and said that they were ready to talk about
 22 selling it.
 23 Q. Okay. Do you recall that
 24 conversation, more or less?
 25 A. Well --

1 Q. This, by the way, isn't a test.
 2 A. You know, he said that he would sell
 3 everything on the west side of the highway. And
 4 any other property that he had was in a trust for
 5 his family, for his boys.
 6 Q. Okay. So at that time he indicated to
 7 you that he was willing to sell the property
 8 located on the west side of the highway?
 9 A. That was all.
 10 Q. And what highway is that?
 11 A. Highway 30, I believe. I'm terrible
 12 at remembering highways.
 13 Q. Okay.
 14 A. I'm in real estate and I never did
 15 know what highway people were on.
 16 Q. This is the side of the highway that
 17 his home was located on, right?
 18 A. Yes. On the west side were all the
 19 buildings and that.
 20 Q. So to summarize, he indicated to you
 21 that he was willing to sell the west side -- the
 22 property located on the west side of the highway,
 23 but not the east side?
 24 A. Never the east side, no. He had put
 25 that all in a trust to his sons.

1 Q. Okay. So I take it at that point you
 2 proceeded with the listing arrangement with him?
 3 A. Uh-huh.
 4 Q. Do you remember what it was originally
 5 listed at, the price?
 6 A. I think it was -- I think he asked for
 7 900 that first time.
 8 Q. Okay. Did he have an appraisal, if
 9 you recall, or anything that --
 10 A. No, no appraisal was done.
 11 Q. He just --
 12 MR. OLSEN: Who is this?
 13 MR. BEARNSON: This is Paul Davis. Paul
 14 was at the earlier deposition.
 15 MR. OLSEN: Sorry to interrupt.
 16 MR. BEARNSON: We'll note for the record
 17 that Mr. Paul Davis has entered the room. He's
 18 present with us in the deposition. Mr. Davis is
 19 one of the principals at Northern Title.
 20 Q. (BY MR. BEARNSON) I'm not sure, Ms.
 21 Julian, if you know him or not, but this is him.
 22 A. I'm not sure. I might have met him
 23 through Harold Henager.
 24 Q. We were talking about your listing of
 25 the Stephens property and the price that was

Affid Plaintiff Motion Reconsider

208

1 established. Do you know how he established that
2 price?

3 A. I think he just decided that was what
4 he wanted.

5 Q. Okay. Did you provide him any advice
6 or counsel in that regard?

7 A. No. You know, when people set the
8 price what they'd like, I try to tell them that if
9 we can't get some offers in at that they should
10 look at reducing it; or if nothing is coming about
11 with -- on a ranch, here, probably 60 days maybe
12 we should think of reducing the price. That's
13 what I always tell people when they're kind of set
14 on the amount. I mean at one time he wanted a
15 million dollars. I told him no, that was not
16 reasonable, let's get the price down to where
17 people might look at it. A million dollars scares
18 people away.

19 Q. Okay. A number of months went by
20 before you got an offer by Curtis Baum?

21 A. Yes. I really didn't have anything to
22 do with that offer.

23 Q. Okay. Do you recall, prior to that
24 offer by Mr. Baum, had you received other offers
25 on the property?

1 A. No.

2 Q. So the offer by Mr. Curtis Baum was
3 the first offer?

4 A. Yes.

5 Q. And let me just show you some
6 documents that we previously had marked as
7 exhibits in this case. I'll show you what we
8 marked as exhibit 3. Excuse me -- well, yes, it
9 is exhibit 3. That looks like a purchase real
10 estate contract?

11 A. Oh, excuse me. Yes. I'm sorry. Yes,
12 Mr. Baum made an offer.

13 Q. Yes.

14 A. I wasn't associated with it, but I had
15 asked Evan if he wouldn't like to co-list with me
16 on that property, Evan Skinner, because I found
17 that not many men are happy with a woman trying to
18 sell them a ranch. They really don't think they
19 know what they're doing. Evan has sold a lot of
20 properties and we worked well together. So he
21 would take over on showing the land and so forth
22 there. And then when we listed the property I had
23 Evan go with me over there and visit with Roger
24 and his sons. We met and had lunch with them and
25 Evan was there at the time.

1 Q. Okay. And at the time -- going back
2 to the time you listed it again, you obtained some
3 things, I guess, some documents and that from
4 Roger and elsewhere, I guess, on the property?

5 A. Uh-huh.

6 Q. Let me show you what we marked as
7 exhibit 2. I'll ask you if you recognize that?

8 A. Yes. That was a document that -- that
9 one, I believe, that Evan and I went out to the --
10 I call it the wrong thing. It used to be the Soil
11 Conservation Service. Now it's a fancier title.
12 The Farm Service. That's where we got that map.

13 Q. And that's something that you put in
14 your file; is that right?

15 A. Yes.

16 Q. I also notice that as part of the
17 listing information you have the warranty deed,
18 that is part of exhibit 1. Is that right, do you
19 recall that?

20 A. Yes.

21 Q. I'll refer you to exhibit 1, a few
22 pages in. There is a document entitled warranty
23 deed. You obtained that from Roger or the
24 recorder's office or something?

25 MR. OLSEN: Are these being entered as

1 exhibits with her deposition?

2 MR. BEARNSON: We'll use the same exhibits
3 that we used with Mr. Cummings.

4 MR. OLSEN: All right. Okay.

5 THE WITNESS: I don't remember for certain
6 if I got it at the courthouse or through the
7 title office or if Roger gave it to me.

8 Q. (BY MR. BEARNSON) But it's something
9 that you would have had in your file?

10 A. Yes.

11 Q. And also part of exhibit 1 there's
12 another copy of what looks to be --

13 A. I think Roger gave us this, which was
14 a tax notice.

15 Q. Okay. And there looks to be another
16 copy of the map that you got --

17 A. This is one that we had a white copy
18 of, too, that was shown pretty clearly where
19 everything was.

20 Q. And we're referring to the last page
21 of exhibit 3, which is the map you got from the --
22 it says at the bottom USDA Farm Services?

23 A. Uh-huh.

24 Q. Okay. So, moving on to the offer that
25 you first received, or your office first received

1 from Curtis Baum on behalf of, was it Three Bar
2 Ranches?

3 A. Yes. I really -- after Evan took it
4 that's all I knew about it, was that he had an
5 offer on it. I didn't have any meetings with Mr.
6 Baum at all.

7 Q. Okay. Do you recall at some point,
8 then, in July of 2007, coming into contact with
9 Mr. Steven Cummings?

10 A. Yes. I had a call at my home. And I
11 live up on the hill and the office was just down
12 from there. Mr. Cummings said he'd been driving
13 around and saw my name on the sign by the
14 flagstone home. If there was more property with
15 it. I told him yes, there was a ranch there. He
16 said, well, could you come down to the office and
17 show it to me, so I did.

18 Q. And you met him at the office of Exit
19 Realty?

20 A. Uh-huh.

21 Q. Was he with anyone else at that time?

22 A. Not then. He was alone.

23 Q. Okay. What did you do -- you had a
24 conversation with him, I take it, at the office?

25 A. Yes. I told him how much property

1 there was there and he was just very, very
2 interested in the home. It's a beautiful home,
3 all out of flagstone. It's a lovely home. And so
4 I took him in my car and showed him the home.

5 Q. Before we go into that, did you give
6 him any documents at the office?

7 A. I gave him a white one like this.

8 Q. You're pointing to exhibit 2?

9 A. Yes.

10 Q. And --

11 A. But it didn't have -- it's just this
12 much, it's not that one that has all of the
13 property. There's a white one in there some place
14 that was like what I gave him.

15 Q. When you say a white one, was it just
16 the negative of exhibit 2?

17 A. Just this one, yes.

18 Q. Exhibit 2?

19 A. Uh-huh. Yes, exhibit 2.

20 Q. And do you have a specific
21 recollection of having given that to Mr. Cummings
22 at your office?

23 A. Yes.

24 Q. Did you give him any other
25 documentation there?

1 A. I think there was a listing paper he
2 might have had. I really don't know.

3 Q. Okay. How long were you with him at
4 the office when you discussed the property?

5 A. Not long at the office discussing it.
6 We went out -- five or 10 minutes. He said that
7 he had sold property in Utah. He was from
8 American Fork and that he needed to do a 1031
9 before he would lose his money, was the way he
10 told me. So I thought it was kind of a fast
11 thing.

12 I hurried and took him out and I showed him
13 the house. And then he wanted -- told him about
14 the property and what there was and so forth. And
15 he wanted to go see it. And I didn't know the
16 man. I really didn't want to go show him land. I
17 had my car, and it was a nice car, and I didn't
18 want to go down the field in it. So I said let me
19 take you back --

20 Q. Let me slow you down right there. You
21 met with him at the office?

22 A. Uh-huh.

23 Q. And then after 10 minutes or so you
24 took him directly out to the property?

25 A. Yes.

1 Q. Was that along Highway 30?

2 A. Yes.

3 Q. And you pulled into the Stephens'
4 property on the west side?

5 A. Yes.

6 Q. Did you have a further discussion with
7 him about the property at that time?

8 A. I told him about how many water shares
9 there were with it, and I think there's a lot of
10 highway frontage. It was all highway frontage. I
11 showed him where it started and ended, but I
12 wasn't going to go out into the fields and things.

13 Q. Did you discuss the west side of the
14 property as well as the east, or what did you
15 discuss?

16 A. I never discussed anything on the east
17 side. It seems like he asked if there was any
18 other property for sale and I said no, this is all
19 there is. I said they own property over here, but
20 that's in a trust.

21 Q. When you say over here, you mean the
22 east side?

23 A. On the east side, yes. I'm talking
24 like I do with my hands.

25 Q. Okay. So the property you showed him

1 that was for sale, was that just the property on
2 the west side?

3 A. Absolutely.

4 Q. Okay. How long were you at the
5 property on this first occasion when you were
6 there with him?

7 A. Probably 20, 25 minutes.

8 Q. Okay. Did you drive around or just
9 walk around?

10 A. Just walked around there. I could
11 point to where the property started, you could see
12 the fence line from the house on where the
13 property started still going north.

14 Q. Is that the fence on the west side of
15 the highway?

16 A. Oh, yes, uh-huh. I told him it's all
17 on the west side of the highway. I think it
18 was -- see, I can't remember for sure. It was
19 either 3300 or 3600 highway frontage feet.

20 Q. Okay. And then after you spent 20 or
21 25 minutes there you're saying you went back to
22 the office?

23 A. I told him I'd see if Evan happened to
24 be in and he could take him out in his truck and
25 show him the land.

1 Q. So the two of you drove back in your
2 car?

3 A. Uh-huh.

4 Q. To the office?

5 A. Yes.

6 Q. And did you locate Evan there?

7 A. Uh-huh.

8 Q. Tell me what happened at that point.

9 A. Well, as I recall, Evan's wife was
10 with him. And he has one of those cars with the
11 little seats in the back of the pickup. We just
12 went out there and Evan drove down in the fields
13 as far as he could go.

14 Q. Did you go out with them?

15 A. Yes, I was there.

16 Q. Did you take your car separately?

17 A. No, I rode with them. We all four
18 road with him in Evan's truck.

19 Q. Very good. Tell us what you did then
20 with Evan and Mr. Cummings, and it was Evan's wife
21 as well?

22 A. Uh-huh.

23 Q. The four of you?

24 A. Yes.

25 Q. Tell us what happened then.

1 A. Well, we just told him that there was
2 a hundred water shares, which is a lot of good
3 water there. And the sprinkler pipes that were
4 there all went with the property. There was -- on
5 a paper there was a tractor and a tandem disk and
6 another thing, and that he would sell with the
7 property. And any furniture in the home that was
8 left by the Stephens would go with the property.

9 And we just went down -- Evan could almost
10 show him where the property line was to the
11 farthest west of that property. It gets down
12 awful close, kind of, to the river there, so we
13 couldn't go absolutely all the way, it was too
14 muddy.

15 Q. But you did drive out in the field
16 somewhere?

17 A. Yes. We went as far as we could all
18 around it. It's all in one big piece
19 contiguously.

20 Q. And was that just on the west side
21 again?

22 A. Yes.

23 Q. Was there any discussion about any
24 other property on the east side?

25 A. No.

1 Q. Okay. Did you ever hear reference by
2 Evan or Mr. Cummings to any property on the east
3 side that was for sale?

4 A. Never.

5 Q. Were you able to show the house to Mr.
6 Cummings at that time?

7 A. I showed the house to Mr. Cummings
8 when I took him out there with me alone.

9 Q. The first time?

10 A. Yes.

11 Q. You opened the door and went inside
12 the house?

13 A. Yes.

14 Q. Okay.

15 A. I took him through every bit of it.

16 Q. And you answered any of his questions,
17 I guess?

18 A. Everything that I knew.

19 Q. About how long, then, were you out
20 there, the four of you, on that second time?

21 A. Probably a half an hour or better.

22 Q. Okay. Did Mr. Cummings indicate that
23 he was interested in purchasing the property at
24 that time?

25 A. Well, he just seemed to be very

Affid Plntf Motn Reconsider

211

1 interested in everything that was said. He didn't
2 really say I want to buy it or, you know, anything
3 like that, but he showed a great interest in it.
4 But we've had a lot of people do that and never
5 see them again.

6 Q. Okay. All right. After you concluded
7 your visit, the second visit out to the property,
8 the four of you, what happened at that point?

9 A. Well, I just didn't do any more with
10 the property. I think Evan showed it again. I
11 think that Roger told me that he and his wife, and
12 I think Steven and his wife, and the Phelps --

13 Q. I'm just talking about on that day did
14 you go back to the office and have any further
15 discussion with Mr. Cummings or did you pretty
16 much conclude your meeting at that time?

17 A. I pretty much -- as I recall, I didn't
18 do any more than that.

19 Q. Okay. But as you sit here today, is
20 it fair to say that you do have a clear
21 recollection of that day going to the property
22 with Mr. Cummings twice?

23 A. Yes.

24 Q. Okay. And the second time would have
25 been with Mr. Evan Skinner?

1 A. Yes.

2 Q. I want to show you what has been
3 previously marked as exhibit 19 in this case. The
4 first page of exhibit 19 is a fax cover sheet. It
5 looks like it has the Exit Realty logo at the top
6 and then it says from Dot. Would that be you?

7 A. Yes.

8 Q. And it's to Steven Cummings. At the
9 top -- well, it seems to be dated, the
10 handwriting, it looks like July 26th?

11 A. Uh-huh.

12 Q. And that seems to be confirmed by the
13 fax stamp at the top, do you see that?

14 A. Yes.

15 Q. Do you have a recollection of having
16 sent this fax or asked for this fax to be sent to
17 Mr. Cummings?

18 A. I must have asked for it. I didn't
19 always do those things. That's not my printing.
20 That's Pam Jackson's, who was a secretary.

21 Q. And tell me, she was a secretary in
22 the Exit Realty office?

23 A. Yes.

24 Q. Okay. And she assisted you in this;
25 is that correct?

1 A. Generally, whenever I had anything
2 like that to do, I would just ask her to fax them.

3 Q. Okay. That was going to be my next
4 question, is that something she typically did?

5 A. That is what we ordinarily did, yes.

6 Q. And then let me show you another fax,
7 which is marked as exhibit 20 to the depositions.
8 I reviewed with you this earlier when we met. It
9 looks like it's a fax from Mr. Evan Skinner to Mr.
10 Cummings. This one is dated, the handwriting, is
11 July 25, but the fax at the top seems to indicate
12 that it was possibly the 26th.

13 A. But that could have been later in the
14 day, too, when he wrote it. That happens a lot.
15 I don't know.

16 Q. Did you have any knowledge of this
17 particular fax or was this something that Mr.
18 Skinner did without you being involved?

19 A. I wouldn't have been involved in that
20 at all. In fact, can I look back at this?

21 Q. Yes. Exhibit 19?

22 A. Yeah. That is the offer.

23 Q. Of Curtis Baum?

24 A. Yeah. I had nothing to do with that.

25 This is not my writing, this is Evan's.

1 Q. Yes, on the body of exhibit 19?

2 A. Right. I didn't write the offer up.

3 Q. Okay. Very good. Thank you for that
4 clarification.

5 A. You know, and I probably read it and
6 asked Pam to send it in, so she put my name on it.

7 Q. Tell me, at one point, and I'll just
8 represent this to you, that a representative of
9 Northern Title indicated at one point you went
10 back into the office of Northern Title to verify
11 that the legal description you had given them was
12 just the property on the west side of the
13 property?

14 A. Yes.

15 MR. OLSEN: I just want to object on the
16 record, that we're stating testimony that hasn't
17 been stated and representing things that aren't
18 in the record. Anyway, I just wanted to put that
19 on the record. Thank you.

20 Q. (BY MR. BEARNSON) My representation to
21 you is that I've had conversation with them and
22 they indicated that you'd come in and discussed
23 that, or made that inquiry. Do you recall that?

24 A. Yes.

25 Q. Tell me what you recall about that.

Affid Plaintiff Motn Reconsider

212

1 A. Well, I just wanted to make sure that
2 the property legal stated that it was the west
3 side of the highway.

4 Q. Do you recall who you spoke to in that
5 regard?

6 A. I thought it was Lori.

7 Q. Okay. And did she respond to you in
8 any fashion then or later?

9 A. She just got the correct legal to us.

10 Q. Okay. When she got the correct legal
11 to you, do you recall in what form that came to
12 you?

13 A. I don't, except I remember reading on
14 it that there was the exception of the other
15 property on the other side.

16 Q. Okay.

17 A. And I didn't know that there was
18 anything wrong for it to be where it was located
19 on there. I didn't know that was wrong.

20 Q. Okay. Between the times that you
21 originally showed Mr. Cummings the property and
22 the closing of the property, it appears from our
23 records that we've been able to determine that the
24 closing occurred on August 3rd. Did you have any
25 other contact or dialogue with Mr. Cummings?

1 A. Yes. He came to the office at fair
2 time, and I can't tell you an exact day.
3 Sometimes the fair time was the 17th and 18th.
4 I've seen it be the 22nd or it could have been the
5 26th. I don't have my --

6 Q. Is that in August?

7 A. Yes.

8 Q. So it might have been after the
9 closing, but tell us about that, if you recall
10 that particular contact with him?

11 A. Well, he came into the office, and I
12 believe it was Jeanette Gaily that was in there
13 working. He asked her if I was around. She said
14 Dorothy is just up at home. He said, well, why
15 don't you have her come down.

16 Q. Now, that part sounds like you weren't
17 present at the time so someone must have told you
18 about that; is that right, when he came in?

19 A. Yes.

20 Q. Who told you about that?

21 A. Jeanette Gaily. She just called my
22 phone and I came right down.

23 Q. And at that point you met with Mr.
24 Cummings again?

25 A. Yeah. I didn't know really what he

1 wanted.

2 Q. Okay. Now, the closing would have
3 already occurred at this time?

4 A. Uh-huh.

5 Q. Was he alone?

6 A. He had a friend with him, a younger
7 man.

8 Q. Okay. Did you discuss the property
9 then?

10 A. Not really. He was just -- he wanted
11 me to see his van, he wanted to know if I'd like
12 to go for a ride in it. He was just real
13 different with this man. I didn't feel
14 comfortable with him at all.

15 Q. Were you able to determine why he came
16 in the office and asked for you?

17 A. I didn't know.

18 Q. Did he mention the closing?

19 A. Not a thing.

20 Q. Did he mention anything about the
21 property or any problems that he had?

22 A. No.

23 Q. Did he mention anything about the west
24 side versus the east side of the highway property?

25 A. Not a thing.

1 Q. Let's go through your deposition if we
2 can, Ms. Julian, just to make a couple of points
3 of clarification. Paragraph four mentions that
4 you were the listing agent for the Stephens
5 property. I think we've covered that, is that
6 correct?

7 A. Yes. But I also then invited Evan to
8 co-list with me.

9 Q. Okay. And paragraph five indicates
10 that on or about July 31st, 2007, you received a
11 copy of the commitment for title insurance?

12 A. And that would have been earlier. I
13 can see now -- if I'd only had my day timer when I
14 was doing this I would have known, but I knew it
15 was before the first of August.

16 Q. Okay. So other than the date -- you
17 think the actual date might be earlier?

18 A. Yes.

19 Q. Okay. You also mention that the plat
20 map contained -- the title commitment contained a
21 plat map with arrows indicating that the property
22 involved included only real property located west
23 of Highway 30?

24 A. There were red arrows on the property,
25 on the map.

1 Q. Were these stamp arrows, more or less?
 2 A. Yes.
 3 Q. Let me show you exhibit 1 to Lori
 4 Thornock's affidavit. Look at that and see if you
 5 recall that document?
 6 A. (Pause.) That's like what it was, and
 7 the arrows were red.
 8 Q. You're looking to the last page of
 9 Lori Thornock's affidavit. That's a copy of the
 10 plat map?
 11 A. Uh-huh.
 12 Q. And there are five arrows that say
 13 subject property?
 14 A. Uh-huh.
 15 Q. And those were in red on the original?
 16 A. Uh-huh.
 17 Q. Okay. Do you recall having received
 18 that in July of 2007?
 19 A. Yes. That was done before it was ever
 20 closed.
 21 Q. Okay. Do you recall whether or not
 22 you ever gave a copy of that title commitment to
 23 Mr. Cummings?
 24 A. I gave -- I don't know if I gave him a
 25 copy of the title, I think that was mailed to him.

1 But I gave him a map like this, but it was cut off
 2 about there, it didn't go over that far on it.
 3 And just --
 4 Q. To be clear on the record, you're
 5 talking about the last page of exhibit 1 to Lori
 6 Thornock's deposition, or, excuse me, affidavit.
 7 And on what would be the right side of that
 8 photocopy of the plat map that would have been
 9 cropped off a bit shorter?
 10 A. Yes. Just barely past that section
 11 line.
 12 Q. Okay. The section line between
 13 section 21 and 22; is that correct?
 14 A. Yes.
 15 Q. Okay. But that copy that you gave to
 16 Mr. Cummings had the same red arrow stamps?
 17 A. He had that later, but he had one
 18 without any arrow stamps on it.
 19 Q. As well?
 20 A. When he was looking before.
 21 Q. And the one you're referring to
 22 without any arrow stamps, is that exhibit 2 that
 23 we previously saw?
 24 A. Yes.
 25 Q. So those are different maps in the

1 sense that the one you obtained at the USDA
 2 office, exhibit 2, and the other one you received
 3 from Northern Title?
 4 A. Well, yes, I think they're the same
 5 things.
 6 Q. Okay. They're just different in
 7 appearance?
 8 A. Right, in appearance, correct.
 9 Q. At the time you were showing the
 10 property to Mr. Cummings, did he inform you that
 11 he also was a real estate agent?
 12 A. It kind of seems like he said that he
 13 had sold -- that he had sold property and real
 14 estate.
 15 Q. Okay. Did he, at the time you met
 16 with him on the day you visited the property, did
 17 he ask for any other information from you that you
 18 did not have?
 19 A. No. Not that I remember, no.
 20 Q. Okay. I again will represent to you
 21 that in Mr. Cummings's deposition he indicated
 22 that you had never gone to the property with him.
 23 A. That's not right.
 24 Q. Okay. You specifically recall having
 25 done so twice on the same day?

1 A. Absolutely.
 2 Q. Okay. And your focus in showing him
 3 that property on those dates was it always on the
 4 west side of the highway?
 5 A. Yes.
 6 MR. OLSEN: Object as leading. There's
 7 been quite a few questions where you are leading
 8 this witness.
 9 Q. (BY MR. BEARNSON) You understand Mr.
 10 Olsen's objection, that I am asking questions that
 11 might suggest the answer to you. Tell me what
 12 property you were focused on and what you were
 13 showing Mr. Cummings on those two occasions that
 14 you visited the property with him?
 15 A. I showed him only the property on the
 16 west side of the road that belonged to the
 17 Stephens family there, where the home was and the
 18 highway was the frontage of that property.
 19 Q. Okay. Did you ever suggest to him
 20 that any property located on the east side of the
 21 highway was for sale?
 22 A. Never.
 23 Q. Did you suggest to him ever
 24 specifically that it was not for sale?
 25 A. Well, yes. The boys had said they

1 didn't want to sell it.

2 Q. I'm asking, though, what you told Mr.
3 Cummings.

4 A. I just said that that property is not
5 for sale. I may have mentioned, and it has
6 nothing to do with this, but years before I had
7 sold 40 acres that now belongs to Moore Romrell
8 that belonged to Roger's dad Lyle Stephens. That
9 was when his dad was alive. I had sold that
10 property for Lyle and everyone said that that was
11 a pretty tough thing to do.

12 Q. Okay. How about if we take a break
13 for a few minutes?

14 A. Fine.

15 Q. If you need to stretch, go ahead and
16 do that.

17 VIDEOGRAPHER: Going off the record.

18 (Recess.)

19 Q. (BY MR. BEARNSON) Ms. Julian, I'd like
20 to turn to exhibit 22 and cover some other aspects
21 of your deposition, or, excuse me, of your
22 affidavit. Paragraph six indicates that you
23 received, I guess, the first iteration of the
24 title commitment from Northern Title. And at that
25 point you confirmed that the legal description

1 contained only property on the west side, is that
2 correct, west side of the highway?

3 A. Well, that is how it was supposed to
4 be, yes.

5 Q. But you recall specifically having
6 contacted someone, probably Lori Thornock, about
7 that?

8 A. Uh-huh.

9 Q. Okay. And then paragraph seven goes
10 on to say that after your contact with them that
11 you received a second copy of a title commitment,
12 and that would be exhibit 2?

13 A. Yes.

14 Q. Okay. And --

15 A. That had the exclusion.

16 Q. Correct. Now, to this point in time
17 was there ever any question in your mind but what
18 was for sale, what Mr. Stephens intended to sell
19 was just the property on the west side?

20 A. Oh, there was no question at all.

21 Q. Was there ever a time that he came
22 back to you and suggested that he might be willing
23 to sell something on the east side?

24 A. Never.

25 Q. Okay. Paragraph nine relates, in your

1 affidavit, relates somewhat to the conversation
2 you had with Mr. Cummings. Is paragraph nine, as
3 you read it, correct?

4 A. I don't remember telling him, myself,
5 that it was on both sides. I just told him what
6 we had for sale.

7 Q. Okay.

8 A. I may have said they owned it over
9 there, but it wasn't for sale.

10 Q. Okay. That's what paragraph nine
11 seems to indicate. You indicate here in paragraph
12 nine that you likely told Mr. Cummings that they
13 owned property on both sides, but only that land
14 located on the west side was for sale?

15 A. That's correct.

16 Q. Okay. And you recall having a
17 conversation to that effect with Mr. Cummings?

18 A. Oh, yes.

19 Q. Paragraph 10 indicates a little bit
20 more about your discussion with Mr. Cummings and
21 the acreage involved. Do you recall discussing
22 the acres involved with Mr. Cummings?

23 A. Just that as far as we could tell it
24 might -- it was 278 acres.

25 Q. Okay. Did he ever question the number

1 of acres?

2 A. Never.

3 Q. Did he seem pleased or satisfied that
4 that was enough for him?

5 MR. OLSEN: Object as leading.

6 Q. (BY MR. BEARNSON) Maybe it's a bad
7 question. Did he ever indicate he wanted more
8 acres than that?

9 A. No.

10 Q. Paragraph 11 indicates that you told
11 Mr. Cummings that the purchase price was reduced
12 to 800,000. And was that a reduction from the
13 900,000 you previously indicated?

14 A. Yes. And that was also because there
15 was an error in there showing a small amount more
16 property, that's why it was reduced. With
17 Roger -- we had to go see Roger on that.

18 Q. Paragraph 12, let me just read that if
19 I may. "I then met Steven Cummings at the office
20 of Exit Realty in Bear Lake and again drove him to
21 the Stephens property. While at Stephens property
22 I showed Steven Cummings the residence located on
23 the Stephens property and emphasized that no
24 property on the east side, on the east of Highway
25 30, was included in the sale of the Stephens

1 property." Is that an accurate summary of what
2 you told him?

3 A. Definitely, yes.

4 Q. And the last sentence of paragraph 13
5 indicates that during his visit with Evan Skinner,
6 "During this visit Evan Skinner and I emphasized
7 to Steven Cummings, both verbally and with the use
8 of the map, that the Stephens property for sale
9 was located only on the west side of Highway 30."
10 Is that also an accurate statement?

11 A. Yes, it is.

12 Q. Okay. Do you recall specifically
13 having given him a map, and that would be exhibit
14 2 that we looked at?

15 A. Yes.

16 MR. BEARNSON: Okay. I think that's all
17 the questions I have right now. Thank you. Mr.
18 Olsen may have some questions for you.

19 MR. OLSEN: I do. How are we doing on the
20 tape?

21 VIDEOGRAPHER: 13 minutes on the tape.

22 MR. OLSEN: Maybe we ought to switch tapes
23 to be safe.

24 VIDEOGRAPHER: Going off the record.
25 (Off the record.)

1 (Exhibits 27, 28, & 29 marked.)

2 VIDEOGRAPHER: Back on the record.

3 MR. OLSEN: All right. I think we're back
4 on the record.

5 EXAMINATION

6 BY MR. OLSEN:

7 Q. Thank you for coming all the way from
8 Eagle. I hope it wasn't the only reason why you
9 came over?

10 A. It worked out fine.

11 Q. Okay. Good. Ms. Julian, I've handed
12 you an exhibit which we marked as exhibit number
13 27. Do you have that in front of you?

14 A. Yes.

15 Q. Does that look familiar to you?

16 A. Yes, it does.

17 Q. And what is it?

18 A. It's a listing agreement.

19 Q. A listing agreement for what?

20 A. For Roger Stephens's property that he
21 was selling.

22 Q. Is this a listing agreement that you
23 prepared?

24 A. Yes.

25 Q. All right. I'd like to turn to

1 addendum one -- well, before I do that, let's go
2 back to the first page. Under section two, where
3 it says legal description attached as addendum one
4 with five pages, do you see that?

5 A. Yes.

6 Q. Okay. Let's turn, then, to the
7 addendum, which is at the end of the listing
8 agreement. Are you there?

9 A. Uh-huh.

10 Q. At the top it says in handwriting,
11 addendum one, five pages. Do you have that?

12 A. Yes.

13 Q. Is this the addendum that is
14 referenced on the first page of this listing
15 agreement?

16 A. Yes, if in the legal these things that
17 are excluded are the correct legal on them.

18 Q. But this -- my question to you is that
19 the addendum one is the addendum that is
20 referenced in the legal description?

21 A. Yes.

22 Q. Thank you. All right. I want to go
23 back to -- go over some notes from Mr. Bearnson's
24 questioning and try to follow up on a couple of
25 things.

1 You mentioned that in preparing for,
2 or when you were recollecting this transaction,
3 that there were some papers that were lost. Can
4 you expound on that a little further?

5 A. Well, I tried to keep a day timer
6 like. I didn't have it all that accurate, but I
7 generally would write who I had appointments with
8 or who I had seen in the day timer, anything like
9 that. It would have been helpful so I would have
10 had the exact dates on some of those.

11 Q. So you're saying that day timer was
12 lost?

13 A. Yes.

14 Q. And were there any other records that
15 you can think of that were lost?

16 A. Well, it was my copies of the listing
17 and the sale and all that for my own file.

18 Q. All right. And so you kept a file.
19 Did Exit Realty also keep a file?

20 A. Yes.

21 Q. And when you were working on a
22 property how did the Exit Realty file get
23 supplemented? I mean, how did that get populated
24 with documents?

25 A. Well, that was the office file and

1 anything being done had to be put into that file.

2 Q. So did you -- so, for instance, the
3 listing agreement would have been copied and put
4 into the office file?

5 A. The original was in the office file.

6 Q. And you also had one in your file?

7 A. Yes. I just kept one for me to have.

8 Q. So you would put --

9 A. Mine was a copy.

10 Q. Okay. So your file was the copy of
11 what would have been in the office file?

12 A. Right, uh-huh.

13 Q. And would that have been true for all
14 of the records that you kept?

15 A. I imagine.

16 Q. All right. You mentioned, you know,
17 after this property was listed that there was a
18 Curtis Baum, or Three Bar Ranches, who put a
19 purchase and sale agreement together with regard
20 to the Stephens property. And you mentioned that
21 you didn't have anything to do with that. Can you
22 expound on that a little further?

23 A. Well, I was just the listing agent of
24 the property, so my job was just to advertise the
25 property and show it if anyone asked me, but also

Page 46

1 any other agent in the area who was licensed could
2 go show it. But I had nothing to do with that
3 sale.

4 Q. How did -- so who took care of that
5 sale, or that purchase agreement, was that Evan
6 Skinner?

7 A. Yes; but it would still all be in the
8 office file.

9 Q. Do you recall if Evan told you how
10 that came about?

11 A. Well, the man came in and was just
12 going to buy property all over. Evan has a thing
13 that big of offers that he made on other
14 properties. He just made offers all over the
15 place. I don't know what they were, I wasn't
16 there, I had nothing to do with it. I only saw
17 that man one time.

18 Q. Describe to me what that was like.
19 When you say that man you're referring to Curtis
20 Baum?

21 A. Curtis Baum. He was in Evan's office
22 and I just walked in there and Evan says, Dot,
23 this is Curtis Baum. How do you do and I walked
24 out. I never saw him again or anything. I was
25 with Evan when we took the offer to purchase to

1 Roger and his wife. I went with him to Logan.

2 Q. Was that the offer to purchase from
3 Curtis Baum?

4 A. Yes.

5 Q. And what do you remember about that
6 meeting with the Stephens?

7 A. It was a little difficult for me
8 because the Stephens were my clients, but they are
9 also Evan's. We had to put them as Curtis would
10 just be a customer, you know, the way the rules
11 and that of real estate are. You can't represent
12 both parties. And they have the right to get an
13 attorney if they feel like they're not being
14 represented.

15 Q. So Curtis Baum didn't have an agent
16 representing him?

17 A. No.

18 Q. And so was he -- were you listed as a
19 dual agent for him?

20 A. No.

21 Q. Just a customer?

22 A. He was just a customer.

23 Q. All right. Let's go to the day that
24 you -- oh, I'm sorry. You know when you have one
25 of those moments that you forget something, you

Page 48

1 have a train of thought and then you lose it?

2 A. I'm the only one old enough to do that
3 here.

4 Q. I want to ask you a little bit more
5 about kind of the arrangement that you had with
6 Evan. With this dual arrangement that you had
7 with him, you know, how did you handle commissions
8 off of sales?

9 A. We would just cut them in half.

10 Q. Just cut them in half?

11 A. Uh-huh.

12 Q. Was that going to be the arrangement
13 with Curtis Baum had he purchased the property?

14 A. No, I didn't have anything to do with
15 the sale. I would have only got half of the
16 listing side.

17 Q. What do you mean by that, half of the
18 listing?

19 A. Evan would have gotten the full sale
20 on the selling side and half of the listing side.

21 Q. Okay.

22 A. I wouldn't have had anything to do
23 with the sale. I had nothing to do with the sale.

24 Q. Okay. So is there -- as it was
25 determined with Exit Realty, do you get a special

1 commission if you're the listing -- is there a
2 difference between if you're the listing agent and
3 the selling agent?

4 A. I hope so. I didn't mean to be smart.
5 Yes, generally you list at six percent.

6 Q. Right.

7 A. As a rule. There's no set law. And
8 then it goes three percent to the listing side and
9 three percent to the selling side.

10 Q. Interesting. Okay.

11 A. That way then you can cooperate with
12 other offices, and we're the listing office at
13 Exit. If someone had sold it from another office
14 in Soda Springs, or what have you, they would have
15 gotten three -- their selling side.

16 Q. I think what you're talking about,
17 then, is the buyer's agents and seller's agents.
18 If you're the listing agent, you're the selling
19 agent and you would get six percent, if there's no
20 buyer's agent, right?

21 A. Uh-huh. That is correct.

22 Q. And if you're the -- but if there's a
23 buyer's agent typically they cut it in half and
24 give half to the buyer's agent and half to the
25 listing agent?

1 A. (Witness nodded her head.)

2 Q. So in the Curtis Baum deal you were
3 the selling agent, technically?

4 A. I was only the listing agent.

5 Q. Listing agent. Okay.

6 A. Evan was the selling agent. I had
7 nothing to do with him. And I really didn't write
8 the one up on Mr. Cummings because I found out
9 that Evan had actually shown him other properties,
10 which I didn't know about. And he hadn't gone
11 into the house, but he had driven him all around
12 the valley and showed him three nice big ranches,
13 just saying if you're interested in this then I'll
14 go back and we can get the keys and -- see, there
15 was Jensen's and Carney's was the two other
16 places.

17 Q. So --

18 A. Actually, Curtis had been driven by by
19 Evan before I ever took him out there, but he
20 never told me.

21 Q. So, then, Curtis was Evan's agent, is
22 that correct? Excuse me. Let me reverse that.
23 Evan was Curtis's agent?

24 A. Well, yes, in a way; but he was also
25 the listing agent too.

1 Q. Who was the broker?

2 A. Ryan Olsen.

3 Q. Okay. So you don't recall if there
4 was ever a dual agency agreement signed between
5 you and Evan and Mr. Baum?

6 A. I'm sure there was at some time.

7 Q. Okay.

8 A. But Mr. Baum, I never signed anything
9 with him.

10 Q. Right.

11 A. At all. I had nothing to do with him.

12 Q. When you went out to visit with Mr.
13 Stephens, at that time he was a customer, there
14 was some kind of a customer --

15 A. Right.

16 Q. Okay.

17 A. Because we were representing Roger.

18 Q. Now let's jump forward to Steven
19 Cummings. How did that commission get divided
20 between you and Evan Skinner?

21 A. Evan got the -- we split the listing
22 side, the three percent. And if I remember right,
23 Evan wrote up the offer, so it's whoever writes
24 the offer up. Evan wrote the offer up with
25 Cummings so he got the three percent.

1 Q. And you got three percent as the
2 listing agent?

3 A. No. I got one-and-a-half percent.

4 Q. One and a half?

5 A. Because we co-listed it.

6 Q. Oh. So he got four-and-a-half and you
7 got one-and-a-half?

8 A. Uh-huh.

9 Q. All right.

10 A. And there could have been a little
11 difference on that because I don't have the
12 settlement papers here.

13 Q. Now, you were aware that Mr. Cummings
14 paid \$50,000 to buy the interest in --

15 A. I was after he wrote it up.

16 Q. Okay. Did anybody receive a
17 commission off of that 50,000?

18 A. No, not a penny. Neither did Mr.
19 Stephens.

20 Q. Do you ever recall if either you or
21 Evan Skinner, how they represented themselves --
22 how either you or him represented yourself when
23 you talked to Mr. Cummings in terms of what
24 your -- who your client was?

25 A. I'm sure he was given a blue book that

1 we do with every agent that comes in. That states
2 right there that you're a customer, you give them
3 your very best, due diligence, but you are
4 representing -- and it tells them right there, if
5 they don't feel like they're being represented
6 properly they should get another agent or an
7 attorney.

8 Q. Okay. Thank you. Let's go to the
9 time -- the day in which Steven Cummings contacted
10 you. When Mr. Cummings contacted you and inquired
11 about the Stephens property, at that time was
12 there a purchase agreement with Curtis Baum in
13 place?

14 A. Yes. And I told him so, that there
15 was an offer on the property, but we could take
16 backup offers.

17 Q. And then what was his response to
18 that?

19 A. He just acted like he needed to buy
20 something quite quickly to save his 1031. That
21 was the opinion that I had.

22 Q. So did he -- how did he acknowledge --
23 let me think --

24 A. He really didn't say anything to me
25 about it.

1 Q. He didn't care about the offer that
2 was already there?

3 A. He didn't talk to me about it at all.
4 He did more talking to Evan.

5 Q. Okay.

6 A. I don't know what was said then, but
7 there certainly was an offer on there and all I
8 could do was to tell him sometimes it's wise to
9 take a backup offer.

10 Q. All right. But he was still eager to
11 go see the property?

12 A. He seemed to be, yes.

13 Q. Even though there was a purchase --

14 A. Right, uh-huh.

15 Q. -- agreement in place?

16 MR. BEARNSON: Ms. Julian, it probably
17 would be helpful for the court reporter if you
18 let him finish his question before you answer.
19 Even though you think you know what the question
20 will be, then he doesn't have to try and take
21 down both of you.

22 THE WITNESS: I'm sorry. Thank you.

23 MR. OLSEN: Thank you for clearing that up,
24 Brad.

25 Q. (BY MR. OLSEN) Now, I want to get this

1 straight. You said he came -- he called you about
2 the property?

3 A. Uh-huh.

4 Q. And you said there was an offer and he
5 was eager to see the property, so he came -- he
6 arranged a time to meet with you at the office.
7 Do you remember what time of day it was?

8 A. I don't know for certain. It seemed
9 like it was around noon time.

10 Q. And then he was by himself?

11 A. Yes.

12 Q. And then you drove him to the property
13 and showed him the house?

14 A. Yes.

15 Q. And what kind of car did you have?

16 A. I think then I still had my Cadillac.

17 Q. Okay. And then you said that after
18 you showed him the property, and we'll go over
19 that again, but you came back to the office and
20 then went out a second time. Was that on the same
21 day that you went out the second time?

22 A. I thought it was, later that
23 afternoon, uh-huh.

24 Q. So when you came back to the office
25 Evan was there?

1 A. We came back deliberately to get Evan.

2 Q. All right.

3 A. And knew that if he was there he would
4 show him the -- take him around in his truck, his
5 pickup.

6 Q. And you were in the truck with him at
7 the time?

8 A. Yes.

9 Q. Then you mentioned that after that
10 second visit that you didn't do anything more
11 after that second visit. What do you mean by
12 that?

13 A. Well, I just didn't have any more
14 contact with Mr. Cummings because then he --
15 that's when I found out that Evan had showed him.
16 Mr. Cummings didn't tell me, but he told me that
17 he had shown him other properties. And he just
18 kept working with Evan.

19 Q. So is it your understanding that Mr.
20 Cummings had seen Evan before he went with you?

21 A. I didn't know that. It is my
22 understanding after the fact.

23 Q. Right. You became aware at some point
24 that --

25 A. Yes.

1 Q. -- that Mr. Cummings had already
2 had --
3 A. Yes.
4 Q. -- gone with Mr. Skinner? Another
5 interesting comment I just want to follow up on is
6 that Mr. Bearnson was talking about the change of
7 the price on the listing agreement from 900,000 to
8 800,000. You indicated that there was an error
9 with showing the smaller amount of property. Can
10 you expound on that further?
11 A. Well, it didn't show it -- it didn't
12 show it on the legal. I just believe that we
13 thought that there was more like 300 acres on the
14 west side of the road. And then when Evan checked
15 it, and I was with him, and we saw that it was
16 less than that, it was 278. So then Evan let Mr.
17 Baum know, because we found that out before we
18 ever even shown the property to Cummings.
19 Q. Now, when you say Evan let Mr. Baum
20 know, were you there when --
21 A. No.
22 Q. This was something that Evan told you
23 about later?
24 A. Yes.
25 Q. All right. I gave you -- let's turn

1 to the next exhibit that I gave you. I think it's
2 marked as exhibit number 28. Do you have that in
3 front of you?
4 A. Yes.
5 Q. Do you recognize that document?
6 A. Yes.
7 Q. And what is it?
8 A. That was a letter that I was asked to
9 do just trying to recall when I showed Mr.
10 Cummings the property.
11 Q. And let me clarify. Is that your
12 signature at the bottom --
13 A. Yes.
14 Q. -- of the document, exhibit 28? And
15 the date on this letter is June 18th, 2008?
16 A. (Witness nodded her head.)
17 Q. Do you recall that as being the date
18 that you signed this letter?
19 A. I'm sure that it was.
20 Q. And who asked you to write this
21 letter?
22 A. I honestly don't remember who it was
23 exactly.
24 Q. Did an attorney call you and ask you
25 to do it?

1 A. That might have been Randy Budge who
2 called and asked me to. But I'm sorry, I don't --
3 Q. When you say it might have been
4 Randy --
5 A. Budge.
6 Q. Randy Budge. When he called you what
7 did he say?
8 A. I think I was just asked to write a
9 letter, as I could remember, showing him the
10 property.
11 Q. Did he tell you why you needed to
12 write the letter?
13 A. Not really.
14 Q. Did he explain to you that there were
15 disputes by Mr. Cummings, for instance?
16 A. He really didn't talk to me that much
17 about it.
18 Q. Did you talk to anybody else about
19 this letter or any of the contents in the letter?
20 A. I talked to him, and I believe there
21 was another attorney. I can't remember his name
22 now, that works with Randy.
23 Q. Is that Mark Shaffer?
24 A. Yes, Mark Shaffer.
25 Q. And --

1 A. And that might have even been Mark
2 that asked me on this. And then that August I
3 sold my home and moved. That's when my papers all
4 got not where they should have been.
5 Q. Who did you -- did you talk with
6 anybody from Northern Title about this letter?
7 A. Not that I remember.
8 Q. Did you discuss it with the Stephens
9 at all?
10 A. No.
11 Q. And then --
12 A. Excuse me. I wrote this letter down
13 and asked Pam to type it up for me and signed it.
14 I wrote it down at the office. That was after we
15 had moved our office.
16 Q. And Pam was your assistant there?
17 A. Yes. She was the secretary still
18 there with me.
19 Q. Did you deliver this to anybody or did
20 Pam deliver it?
21 A. Pam delivered anything.
22 Q. Okay. Let's look at the last
23 paragraph of that letter. It says --
24 A. Yeah, it says --
25 Q. Go ahead.

Aff'd Plntf Motn Reconsider

1 A. I told him that he could contact Evan
2 Skinner, an agent at our real estate office, who
3 would be glad to show him around the property in
4 his truck. My truck was not available at the
5 time. And Evan has been helpful to me in showing
6 property.

7 Q. At least it seems to appear from this
8 letter that --

9 A. Yeah.

10 Q. -- when Mr. Cummings called you that
11 you more or less referred him to Evan Skinner who
12 was available?

13 A. No. I didn't really -- that is really
14 not exactly right. But I did tell him -- because
15 I didn't know if we would go back to the office
16 and Evan would be there or not to go show us the
17 property that day.

18 Q. But this was written -- June 18th,
19 2008 --

20 A. Uh-huh.

21 Q. -- would have been about 10 months --

22 A. Right.

23 Q. -- after this all happened? And is
24 there -- no where in this letter does it say that
25 you took him to the property; is that correct?

1 A. Yeah. But I certainly did. I can see
2 where this letter looks really wrong, but I guess
3 when I did it I just -- I knew I took him there.
4 I didn't think I had to write it in.

5 Q. Now, I'll just represent that in Mr.
6 Cummings's deposition he recalls in his
7 conversation with you that there was some kind of
8 issue with your sister having some kind of illness
9 and being in the hospital and that that had your
10 attention?

11 A. That's true.

12 Q. And that is true?

13 A. (Witness nodded her head.)

14 Q. Okay. All right. The next exhibit is
15 exhibit 29. It's a letter -- I'll just represent
16 that this is a letter that's part of a document
17 that was given to us as part of discovery. Maybe
18 what I'd like you to do is just take a couple of
19 minutes and just read this document. You know, if
20 we have to take a break we can do that.

21 MR. BEARNSON: Why don't we go off the
22 record.

23 MR. OLSEN: Okay.

24 VIDEOGRAPHER: Going off the record.

25 (Recess.)

1 Q. (BY MR. OLSEN) All right. Ms. Julian,
2 have you had a chance to take a look at exhibit
3 number 29 during our break here?

4 A. (Witness nodded her head.)

5 MR. BEARNSON: Is that yes?

6 THE WITNESS: Yes. Excuse me. I'm sorry,
7 yes.

8 Q. (BY MR. OLSEN) I'll just represent to
9 you, this was a document sent to us as part of a
10 discovery request. It appears to be, if you'll
11 look at the second page, a document signed by Evan
12 Skinner, Recreation Realty, dated June 16th, 2008.
13 And it appears to be his narrative of events,
14 similar to what you were asked to give at about
15 the same time. The letter is dated June 13th,
16 2008, which is about the same or maybe a day after
17 the previous exhibit.

18 If you'll look at the first part of
19 that, it says, "In the summer of 2007, Dot
20 Julian," and you go by Dot sometimes?

21 A. All the time.

22 Q. All the time. "Received a call from
23 Steve Cummings who wanted to look at some
24 properties. She asked me to help her show this
25 gentleman some land." And you've already

1 testified that that's true.

2 And then he goes on to say, "Mr.
3 Cummings followed me in his motor home to see
4 several properties. When I took him to see the
5 Roger Stephens property, I drove there north on
6 8th Street." It goes on to say, "From there we
7 went to the main residence on the property and he
8 and his family went inside to look".

9 Okay. So my question to you is -- let
10 me preface my question by saying it appears that
11 this is a little different narrative than what
12 you've told us today. So let me just first ask
13 you, is this how you remember how it happened?

14 A. No.

15 Q. So in what way --

16 A. First of all, I showed him the
17 property alone. According to what I found out
18 later, Evan had shown him around properties. I
19 didn't know he had taken him into the house. He
20 told me he never did. The only time Mr. Cummings
21 saw the inside of the home was when I showed him.

22 Q. All right. If you'll turn to the
23 following page, the last paragraph states,
24 "Dorothy Julian has discussed this matter with me
25 and she agrees that this was how things happened."

1 Is that an accurate statement?

2 A. No, because I've never read this first
3 part before til right now.

4 Q. Did you ever discuss what happened
5 with Mr. Cummings with Evan --

6 A. Yes. And --

7 Q. And let me finish the question. We've
8 got a reporter here that is taking this down and
9 it will turn into a muddled mess. But let me ask
10 you the question again. Did you ever discuss this
11 matter with Evan Skinner?

12 A. Yes.

13 Q. And when did that discussion occur?

14 A. Well, it was shortly after I -- I
15 don't know if it was a day or hours or what
16 exactly. Probably the next day was when he told
17 me that he had shown Mr. Cummings other
18 properties. Steve did not call me then. Evan
19 obviously had already shown him properties, and I
20 think it was maybe a day or two later when I got
21 the call. That was when he saw my name, Dot
22 Julian, and my phone number on the sign out by the
23 house. And he never told me he had -- but he
24 hadn't really been into any properties. Maybe
25 Evan showed him again when his family was there,

Page 66

1 but Steve was there alone when I showed him.

2 Q. Let me ask a more precise question,
3 because his statement here is that "Dorothy Julian
4 has discussed this matter with me and she agrees
5 that this is how things happened." And this was a
6 letter written about 10 months after the fact.
7 So, it appears that he's claiming that he had a
8 discussion with you, you know, after the dispute
9 arose in relation to this letter. I mean, I guess
10 my question to you, did you have any -- you've
11 told us about the times that you discussed this
12 with Evan at the time that the transaction was
13 occurring, but I'm talking about after it was
14 closed what discussions did you have with Evan
15 about this?

16 A. Nothing any different than what we
17 ever said.

18 Q. Well, let's clarify that a little
19 more. You're saying that there have been
20 discussions after this was closed, you've talked
21 to Evan about this?

22 A. Just the same as we have talked here.

23 Q. When did you talk to him about this?

24 MR. BEARNSON: Do you want every time?

25 THE WITNESS: Probably a year ago.

(208)345-9611

M & M COURT REPORTING

1 Q. (BY MR. OLSEN) And where were you and
2 where -- where did that conversation take place?

3 A. Well, I don't know what you want me to
4 say.

5 Q. I'm just asking you about your
6 conversations with -- your discussions with Evan
7 Skinner about Cummings. I'm not talking about the
8 time that the transaction was occurring, I'm
9 talking about after it was closed in relation to
10 issues that apparently came up?

11 A. I didn't know of any issues.

12 Q. All right.

13 A. I really didn't know. I had no issues
14 to be discussed because I didn't know there were
15 any. I was just shocked.

16 Q. All right. But, again, if you could
17 think back, you said you had a conversation with
18 Mr. Skinner about this about a year ago. And
19 where was that?

20 A. I think my only conversation with him
21 has been mostly on the fact that he had never told
22 me, even when we went out to the house, that he
23 had driven by there and said this place is for
24 sale. And then he took him to two other places
25 with this same man, whom I didn't know that Mr.

Page 68

1 Cummings had been up and seen any other property
2 in the area until he called me.

3 Q. Until who called you?

4 A. Steve.

5 Q. Steven Cummings?

6 A. Steve Cummings called me at my home.

7 Q. Uh-huh.

8 A. And you know, I just --

9 Q. So I'm trying to go back to this
10 conversation that you had with Evan, that you said
11 to Evan you were concerned that he hadn't told
12 that he had contact with Cummings?

13 A. Right.

14 Q. And why was that of concern to you?

15 A. Well, then, if he had told me he had
16 shown this I probably would have been doing this
17 to have helped Evan. But at the time I thought I
18 was doing this for my sale. I didn't realize that
19 he as an agent at the office had already been
20 talking to this man. I didn't know that.

21 Q. So there was a dual thing going on
22 between the two of you and you weren't aware that
23 Evan was working on this sale?

24 A. No.

25 Q. And then when this all came out you

(208)345-8800 (fax)

000019

Aff'd Plntf Mtn Reconsider

222

1 had a conversation about that?

2 A. Yes. And there was no problem. He
3 had shown it first so that made him Evan's client.

4 Q. But you don't recall talking to him
5 about the contents of this letter?

6 A. No.

7 Q. Now, in your previous testimony, when
8 Mr. Bearson was asking some questions, you said
9 something to the effect that you recall Roger
10 Stephens telling you that he had met with Steven
11 Cummings and had walked the property lines and
12 said that he sold everything on the west side of
13 Highway 30. Is that an accurate statement?

14 A. That's what I was told.

15 Q. When did you talk to Roger Stephens
16 about this?

17 A. I don't remember the date. In the
18 summertime Roger was up on the ranch and would
19 stay there for months at a time. I'd see him a
20 lot because I'd go to the Ranch Hand and eat. And
21 we always liked Mexican food and I would see him
22 once a week there on Thursday.

23 Q. I'm talking about after the
24 transaction closed did you have a conversation
25 with Mr. Stephens about Mr. Cummings?

1 A. Yes. It hasn't been all that long
2 ago. I call them every now and then on the phone
3 to see how they're doing. I've been concerned
4 over their health with this. And I was visiting
5 with Barbara and she just said, you know, I'm just
6 so shocked at this whole problem because I thought
7 they were so happy over the sale and all. And
8 everything seemed to be so nice when Roger and one
9 of the Phelps boys, who leased the property, I
10 guess they all went and looked at it. That's all
11 I know. She had met Stephens's wife, I think her
12 name was Laura, and thought she was a real nice
13 lady. And she says I just am shocked that there's
14 problems now. That was all that was said.

15 Q. Let's go back to your affidavit. Do
16 you have that in front of you?

17 A. Yes.

18 Q. So, again, we're talking about your
19 affidavit. Let's look at the last page of that
20 affidavit. It says dated this 20th day of
21 September, 2010. Is that your signature at the
22 bottom?

23 A. Yes.

24 Q. Where did you sign this document?

25 A. I think this one was signed at the

1 Zions Bank in front of a -- no, it wasn't Zions,
2 it was the other bank at Albertson's, U.S. --

3 Q. U.S. Bank?

4 A. Yes, U.S. Bank.

5 Q. Located where?

6 A. They have a banking service at
7 Albertson's Food Store. That's not far from my
8 house.

9 Q. In Eagle?

10 A. Yes, Eagle, uh-huh.

11 Q. Who prepared this affidavit for you?

12 A. It was either Randy or Mark. I

13 visited with them on the phone.

14 Q. Do you remember when they called you
15 with regard to this affidavit?

16 A. No, not the exact date. Maybe a week
17 or so before. They prepared it and sent it to me.

18 Q. What did they say when -- let's just
19 clarify "they". Was it Mark who called you or
20 Randy who called you?

21 A. First I visited with Randy, but I
22 think it was Mark that called me on this.

23 Q. When you first visited with Randy what
24 did he tell you?

25 A. He just -- I think -- I really don't

1 remember for sure. It was something about he
2 thought there was some discrepancy that Mr.
3 Cummings thought with the property that he bought,
4 that he should have bought more property. I said
5 all he was ever told by me was on the west side of
6 the road.

7 Q. And then Mark Shaffer must have
8 followed up, and he's Randy's associate?

9 A. Yes.

10 Q. Did you get a copy of this affidavit
11 to review before you signed it?

12 A. I can't remember.

13 MR. BEARNSON: Just for clarification, do
14 you mean a copy other than the one she signed?

15 Q. (BY MR. OLSEN) Yeah. Let me try to ask
16 a better question. Did you get a draft of this
17 affidavit before you signed it?

18 A. I don't remember.

19 Q. How was it sent to you?

20 A. It was Fed Ex'd, or one of those.

21 Q. And how did you send it back after you
22 signed it?

23 A. The same way. They had an envelope
24 for me to send it back in.

25 Q. These exhibits, did you look at these

1 exhibits before you signed the affidavit?
 2 MR. BEARNSON: There's three.
 3 THE WITNESS: Well, I had copies of these
 4 before, seen them.
 5 Q. (BY MR. OLSEN) But my question to you is
 6 did you look at those affidavits -- did you review
 7 those exhibits before you signed the affidavit?
 8 A. I probably just looked over them and
 9 thought they looked the same as what I'd seen
 10 before at the office. I didn't really know that
 11 this was something for me to be checking on. I
 12 thought it was just what I could recall.
 13 Q. You didn't think you really needed to
 14 look over those exhibits?
 15 A. I just looked at them, you know.
 16 Q. Those exhibits were sent to you by
 17 Mark Shaffer?
 18 A. Yes.
 19 Q. Along with the affidavit?
 20 A. Uh-huh.
 21 Q. And you signed it?
 22 A. Yes.
 23 Q. Let me ask you about your deposition.
 24 Have you talked to anybody in preparation for
 25 today's deposition?

1 A. Well, I visited with Blair.
 2 Q. Mr. Bearnson?
 3 A. Uh-huh.
 4 Q. You mean --
 5 A. Just the fact that he --
 6 Q. Brad?
 7 A. Brad, excuse me. He just wanted me to
 8 feel comfortable and not be real worried. My son
 9 is an attorney and he's told me not to lose my
 10 temper and be polite to everyone.
 11 Q. I know this is very stressful.
 12 A. Oh, it isn't that much. I just don't
 13 want to make mistakes.
 14 Q. Did you talk to Mr. Bearnson about
 15 your testimony at all?
 16 A. No, not really I didn't.
 17 Q. Did you go over any documents with him
 18 prior to this deposition?
 19 A. Well, I had things that I looked at at
 20 home that had been sent to me. I just went over
 21 those things.
 22 Q. Did you bring any notes with you?
 23 A. I was going to and they're sitting in
 24 the -- I never made any notes, no. I never even
 25 looked at the papers again.

1 Q. Did you have any conversations with
 2 either Randy Budge or Mark Shaffer about this
 3 deposition?
 4 A. Not at all. I didn't know if they
 5 even knew I was having it.
 6 Q. I'm almost done here.
 7 A. That's okay. I'm fine.
 8 Q. Did you have any conversations with
 9 Northern Title, anybody -- any representatives
 10 from Northern Title about this deposition?
 11 A. No.
 12 Q. Have you had any conversations with
 13 representatives from Northern Title about your
 14 affidavit?
 15 A. No.
 16 Q. Your discussion primarily was with
 17 Mark Shaffer and Randy Budge?
 18 A. Yes.
 19 Q. Just one last thing to do here. One
 20 more exhibit here. What exhibit are we on here?
 21 MR. BEARNSON: It will be 30.
 22 MR. OLSEN: Make it an even 30.
 23 (Exhibit 30 marked.)
 24 Q. (BY MR. OLSEN) All right. I'll
 25 represent to you that this is an affidavit from me

1 that attaches some records that we received from
 2 Exit Realty of Bear Lake pursuant to a subpoena.
 3 In this subpoena we basically asked for every
 4 record they had in their file with regard to the
 5 Cummings transaction, among other things.
 6 What I'd like you to do is turn to
 7 exhibit B.
 8 MR. BEARNSON: I'll just note that I've
 9 attached these documents as exhibit 25. I don't
 10 object to you doing it in this form too. I think
 11 I attached a complete copy as exhibit 25.
 12 MR. OLSEN: Okay. The only reason I want
 13 to do it this way -- well, let's see. It's
 14 probably more paper work than we need, but just
 15 for --
 16 MR. BEARNSON: I'll certainly stipulate
 17 that these are what we received through your
 18 subpoena.
 19 MR. OLSEN: All right. Let's just remark
 20 this as exhibit 25 so we're not killing too many
 21 trees here.
 22 Q. (BY MR. OLSEN) Now, what I'd like to do,
 23 just hold that there for a minute and let's pull
 24 out that Farm Service Agency map that we were
 25 looking at earlier. It's going to be the

1 exhibit --

2 MR. BEARNSON: Oh, exhibit 2?

3 MR. OLSEN: Yeah, exhibit 2.

4 Q. (BY MR. OLSEN) What I'd like you to do,
5 Ms. Julian, is to peruse through exhibit B and see
6 if you can find that map anywhere there in exhibit
7 B.

8 A. In this one here?

9 Q. Yes.

10 A. (Pause.) I don't see that map.

11 Q. Take the time to go through that.

12 It's a fairly good-sized document.

13 MR. BEARNSON: To save time, I'll stipulate
14 that it's not in there.

15 MR. OLSEN: Okay.

16 Q. (BY MR. OLSEN) And just keep that open
17 for a minute. And maybe you don't know anything
18 about this, but let me ask you first before we
19 turn to the document. In these documents there's
20 a letter from Exit Realty to Mr. Curtis Baum
21 indicating that the check that he'd written for
22 the earnest money had bounced, had been returned.
23 Were you aware of that at all?

24 A. No.

25 Q. I guess at this point, it sounds to me

1 that Evan Skinner had more or less taken over this
2 transaction at some point?

3 A. I would have nothing to do with any of
4 these papers.

5 Q. Okay. And why is that?

6 A. Because I wasn't the selling agent.

7 Q. You were just the listing agent?

8 A. Correct.

9 MR. OLSEN: All right. Maybe let's just
10 stop briefly here and give us both a chance to
11 catch our breath and see if there's anything else
12 we want to ask her.

13 MR. BEARNSON: Okay.

14 VIDEOGRAPHER: Off the record.

15 (Recess.)

16 MR. OLSEN: I'm finished.

17 (Exhibits 21-26 marked.)

18 (Deposition concluded at 12:55 p.m.)

19 (Signature requested.)
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Rodney Felshaw, CSR No. SRT-969,
Certified Shorthand Reporter, certify:

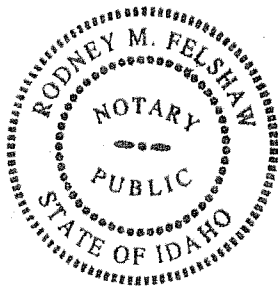
That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by
me.

That the testimony and all objections made
were recorded stenographically by me and
transcribed by me or under my direction.

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 19th day of October, 2010.



Rodney Felshaw
Rodney Felshaw, CSR NO. SRT-969
Notary Public
Brigham City, UT 84302

My commission expires: March 31, 2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

000024

Assd Plntf Motn Reconsider 227

| | | | | |
|--|---|---|--|---|
| <p>A</p> <p>able 24:5 29:23 31:15</p> <p>above-entitled 2:8</p> <p>absolutely 21:3 23:13 36:1</p> <p>accurate 9:15 41:1 41:10 44:6 65:1 69:13</p> <p>acknowledge 53:22</p> <p>acreage 39:21</p> <p>acres 37:7 39:22,24 40:1,8 57:13</p> <p>acted 7:11 53:19</p> <p>acting 7:15</p> <p>action 5:19</p> <p>actual 32:17</p> <p>addendum 43:1,3,7 43:11,13,19,19</p> <p>advertise 45:24</p> <p>advice 13:5</p> <p>affidavit 3:9,10,11 8:2,2,19,24 9:4,7 33:4,9 34:6 37:22 39:1 70:15,19,20 71:11,15 72:10,17 73:1,7,19 75:14 75:25</p> <p>affidavits 73:6</p> <p>afternoon 55:23</p> <p>agency 51:4 76:24</p> <p>agent 7:9 32:4 35:11 45:23 46:1 47:15,19 49:2,3 49:18,19,20,23,24 49:25 50:3,4,5,6 50:21,23,25 52:2 53:1,6 61:2 68:19 78:6,7</p> <p>agents 49:17,17</p> <p>ago 8:7,16 66:25 67:18 70:2</p> <p>agreement 3:13,16 42:18,19,22 43:8 43:15 45:3,19 46:5 51:4 53:12 54:15 57:7</p> | <p>agrees 64:25 66:4</p> <p>ahead 37:15 60:25</p> <p>Albertson's 71:2,7</p> <p>alive 37:9</p> <p>American 19:8</p> <p>amount 13:14 40:15 57:9</p> <p>answer 36:11 54:18</p> <p>answered 24:16</p> <p>anybody 52:16 59:18 60:6,19 73:24 75:9</p> <p>Anyway 28:18</p> <p>apparently 67:10</p> <p>appear 61:7</p> <p>appearance 35:7,8</p> <p>APPEARANCES 2:10</p> <p>appearing 9:2</p> <p>appears 29:22 63:10,13 64:10 66:7</p> <p>appointments 44:7</p> <p>appraisal 12:8,10</p> <p>approach 10:12,13</p> <p>appropriate 5:20</p> <p>approximately 4:12</p> <p>area 46:1 68:2</p> <p>arose 66:9</p> <p>arranged 55:6</p> <p>arrangement 12:2 48:5,6,12</p> <p>arrow 34:16,18,22</p> <p>arrows 32:21,24 33:1,7,12</p> <p>asked 8:1 10:19 12:6 14:15 20:17 26:16,18 28:6 30:13 31:16 45:25 58:8,20 59:2,8 60:2,13 63:14,24 76:3</p> <p>asking 6:13 36:10 37:2 67:5 69:8</p> <p>aspects 37:20</p> <p>assistant 60:16</p> | <p>assisted 26:24</p> <p>associate 6:24 7:16 72:8</p> <p>associated 14:14</p> <p>attached 43:3 76:9 76:11</p> <p>attaches 76:1</p> <p>attention 62:10</p> <p>attorney 47:13 53:7 58:24 59:21 74:9</p> <p>attorneys 5:1</p> <p>August 29:24 30:6 32:15 60:2</p> <p>available 61:4,12</p> <p>aware 52:13 56:23 68:22 77:23</p> <p>awful 23:12</p> <p>a.m 2:5 4:12</p> <p>B</p> <p>B 76:7 77:5,7</p> <p>back 9:18 15:1 19:19 21:21 22:1 22:11 25:14 27:20 28:10 38:22 42:2 42:3 43:2,23 50:14 55:19,24 56:1 61:15 67:17 68:9 70:15 72:21 72:24</p> <p>backup 53:16 54:9</p> <p>bad 40:6</p> <p>bank 71:1,2,3,4</p> <p>banking 71:6</p> <p>Bar 17:1 45:18</p> <p>Barbara 70:5</p> <p>barely 34:10</p> <p>basically 76:3</p> <p>Baum 13:20,24 14:2,12 17:1,6 27:23 45:18 46:20 46:21,23 47:3,15 48:13 50:2 51:5,8 53:12 57:17,19 77:20</p> <p>bear 1:3 4:19 9:10 40:20 76:2</p> <p>BEARD 2:12</p> | <p>Bearnson 2:18,19 3:4 5:5,5,16,23 12:13,16,20 16:2 16:8 28:20 36:9 37:19 40:6 41:16 54:16 57:6 62:21 63:5 66:24 69:8 72:13 73:2 74:2 74:14 75:21 76:8 76:16 77:2,13 78:13</p> <p>Bearnson's 43:23</p> <p>beautiful 18:2</p> <p>behalf 2:2 17:1</p> <p>believe 11:11 15:9 30:12 57:12 59:20</p> <p>belonged 36:16 37:8</p> <p>belongs 37:7</p> <p>best 53:3</p> <p>better 24:21 72:16</p> <p>big 23:18 46:13 50:12</p> <p>bit 24:15 34:9 39:19 48:4</p> <p>Blair 74:1</p> <p>blue 52:25</p> <p>body 28:1</p> <p>book 52:25</p> <p>bottom 16:22 58:12 70:22</p> <p>bought 72:3,4</p> <p>bounced 77:22</p> <p>boys 11:5 36:25 70:9</p> <p>Brad 2:19 5:5 54:24 74:6,7</p> <p>break 6:19 37:12 62:20 63:3</p> <p>breath 78:11</p> <p>briefly 78:10</p> <p>bring 5:19 74:22</p> <p>broker 6:24 7:9,12 7:16 51:1</p> <p>brokerage 7:19</p> <p>Budge 59:1,5,6 75:2,17</p> | <p>buildings 11:19</p> <p>bunch 6:13</p> <p>bus 10:3</p> <p>buy 25:2 46:12 52:14 53:19</p> <p>buyer's 49:17,20 49:23,24</p> <p>C</p> <p>C 4:13</p> <p>Cadillac 55:16</p> <p>call 15:10 17:10 58:24 63:22 65:18 65:21 70:2</p> <p>called 10:20 30:21 55:1 59:2,6 61:10 68:2,3,6 71:14,19 71:20,22</p> <p>car 18:4 19:17,17 22:2,16 55:15</p> <p>care 46:4 54:1</p> <p>Carney's 50:15</p> <p>cars 22:10</p> <p>case 1:9 4:24 14:7 26:3</p> <p>catch 78:11</p> <p>cause 4:3 5:11</p> <p>certain 16:5 55:8</p> <p>certainly 54:7 62:1 76:16</p> <p>Certified 2:6</p> <p>chance 63:2 78:10</p> <p>change 57:6</p> <p>check 10:15 77:21</p> <p>checked 57:14</p> <p>checking 73:11</p> <p>claiming 66:7</p> <p>CLAIR 2:12</p> <p>clarification 6:17 28:4 32:3 72:13</p> <p>clarify 58:11 66:18 71:19</p> <p>clear 5:18 25:20 34:4</p> <p>clearing 54:23</p> <p>clearly 16:18</p> <p>client 52:24 69:3</p> <p>clients 47:8</p> |
|--|---|---|--|---|

| | | | | |
|---------------------|--------------------|---------------------|---------------------|---------------------|
| close 23:12 | 69:1,24 | 67:7 68:1,5,6,12 | delivered 60:21 | document 15:8,22 |
| closed 33:20 66:14 | conversations 67:6 | 69:11,25 72:3 | deposed 6:8 | 33:5 58:5,14 |
| 66:20 67:9 69:24 | 75:1,8,12 | 76:5 | deposition 1:17 2:1 | 62:16,19 63:9,11 |
| closing 29:22,24 | cooperate 49:11 | Cummings's 35:21 | 3:8 4:8,15,15 9:1 | 70:24 77:12,19 |
| 30:9 31:2,18 | copied 45:3 | 62:6 | 9:1 12:14,18 16:1 | documentation |
| come 10:15,20 | copies 44:16 73:3 | Curtis 13:20 14:2 | 32:1 34:6 35:21 | 18:25 |
| 17:16 28:22 30:15 | copy 16:12,16,17 | 17:1 27:23 45:18 | 37:21 62:6 73:23 | documents 8:18 |
| comes 53:1 | 32:11 33:9,22,25 | 46:19,21,23 47:3 | 73:25 74:18 75:3 | 14:6 15:3 18:6 |
| comfortable 31:14 | 34:15 38:11 45:9 | 47:9,15 48:13 | 75:10 78:18 | 44:24 74:17 76:9 |
| 74:8 | 45:10 72:10,14 | 50:2,18,21 53:12 | depositions 5:15 | 77:19 |
| coming 13:10 17:8 | 76:11 | 77:20 | 27:7 | doing 14:19 32:14 |
| 42:7 | Coronado 2:14 | Curtis's 50:23 | Describe 46:18 | 41:19 68:16,18 |
| commencing 2:4 | correct 7:18,21 | customer 47:10,21 | description 28:11 | 70:3 76:10 |
| comment 57:5 | 26:25 29:9,10 | 47:22 51:13,14 | 37:25 43:3,20 | dollars 13:15,17 |
| commission 49:1 | 32:6 34:13 35:8 | 53:2 | determine 29:23 | door 24:11 |
| 51:19 52:17 | 38:2,16 39:3,15 | cut 34:1 48:9,10 | 31:15 | Dorothy 1:17 2:1 |
| commissions 48:7 | 43:17 49:21 50:22 | 49:23 | determined 48:25 | 3:3,9 4:1,15 5:9 |
| commitment 32:11 | 61:25 78:8 | CV-09-183 1:10 | dialogue 29:25 | 6:1 30:14 64:24 |
| 32:20 33:22 37:24 | counsel 13:6 | 4:25 | difference 49:2 | 66:3 |
| 38:11 | County 1:3 4:18 | C.S.R. 1:21 | 52:11 | Dot 26:6 46:22 |
| Company 4:13 | couple 32:2 43:24 | | different 31:13 | 63:19,20 65:21 |
| complete 9:15 | 62:18 | D | 34:25 35:6 64:11 | draft 72:16 |
| 76:11 | court 1:1 4:9,9,17 | D 3:1 | 66:16 | drive 4:7 6:7 21:8 |
| concern 68:14 | 5:3 54:17 | dad 37:8,9 | difficult 47:7 | 23:15 |
| concerned 68:11 | courthouse 16:6 | date 32:16,17 58:15 | diligence 53:3 | driven 50:11,18 |
| 70:3 | cover 26:4 37:20 | 58:17 69:17 71:16 | directly 19:24 | 67:23 |
| conclude 25:16 | covered 32:5 | dated 26:9 27:10 | discovery 62:17 | driving 17:12 |
| concluded 25:6 | co-list 14:15 32:8 | 63:12,15 70:20 | 63:10 | drove 22:1,12 |
| 78:18 | co-listed 52:5 | dates 8:11 36:3 | discrepancy 72:2 | 40:20 55:12 64:5 |
| confirmed 26:12 | cropped 34:9 | 44:10 | discuss 20:13,15 | dual 47:19 48:6 |
| 37:25 | Cummings 1:5 | Davis 2:23 12:13 | 31:8 60:8 65:4,10 | 51:4 68:21 |
| Conservation | 4:19 5:8 6:9 7:20 | 12:17,18 | discussed 19:4 | due 53:3 |
| 15:11 | 16:3 17:9,12 | day 25:13,21 27:14 | 20:16 28:22 64:24 | duly 4:2 5:10 |
| contact 17:8 29:25 | 18:21 22:20 24:2 | 30:2 32:13 35:16 | 66:4,11 67:14 | |
| 30:10 38:10 56:14 | 24:6,7,22 25:15 | 35:25 44:5,8,11 | discussing 19:5 | E |
| 61:1 68:12 | 25:22 26:8,17 | 47:23 53:9 55:7 | 39:21 | E 3:1 |
| contacted 38:6 53:9 | 27:10 29:21,25 | 55:21 61:17 63:16 | discussion 20:6 | eager 54:10 55:5 |
| 53:10 | 30:24 33:23 34:16 | 65:15,16,20 70:20 | 23:23 25:15 39:20 | Eagle 6:3,5 8:15 |
| contained 32:20,20 | 35:10 36:13 37:3 | days 13:11 | 65:13 66:8 75:16 | 42:8 71:9,10 |
| 38:1 | 39:2,12,17,20,22 | deal 50:2 | discussions 66:14 | earlier 12:14 27:8 |
| contents 59:19 69:5 | 40:11,19,22 41:7 | decided 10:6 13:3 | 66:20 67:6 | 32:12,17 76:25 |
| contiguously 23:19 | 50:8 51:19,25 | deed 15:17,23 | disk 23:5 | earnest 77:22 |
| contract 14:10 | 52:13,23 53:9,10 | defendant 4:16 | dispute 66:8 | east 11:23,24 20:14 |
| conversation 10:24 | 56:14,16,20 57:1 | defendants 1:14 | disputes 59:15 | 20:16,22,23 23:24 |
| 17:24 28:21 39:1 | 57:18 58:10 59:15 | 2:2,17 4:24 | District 1:1,2 4:17 | 24:2 31:24 36:20 |
| 39:17 62:7 67:2 | 61:10 63:23 64:3 | Definitely 41:3 | 4:17 | 38:23 40:24,24 |
| 67:17,20 68:10 | 64:20 65:5,17 | deliberately 56:1 | divided 51:19 | eat 69:20 |
| | | deliver 60:19,20 | | eating 10:16 |

| | | | | |
|---------------------|---------------------|----------------------|---------------------|--------------------|
| effect 39:17 69:9 | exclusion 38:15 | farthest 23:11 | found 14:16 50:8 | 68:21 74:23 76:25 |
| either 21:19 52:20 | Exclusive 3:15 | fashion 29:8 | 56:15 57:17 64:17 | good 8:17 9:17 |
| 52:22 71:12 75:2 | excuse 4:22 8:24 | fast 19:10 | four 9:11 22:17,23 | 22:19 23:2 28:3 |
| emphasized 40:23 | 14:8,11 34:6 | fax 26:4,13,16,16 | 24:20 25:8 32:3 | 42:11 |
| 41:6 | 37:21 50:22 60:12 | 27:2,6,9,11,17 | Fourth 2:3 4:13 | good-sized 77:12 |
| employed 6:23 | 63:6 74:7 | Fed 72:20 | four-and-a-half | gotten 48:19 49:15 |
| ended 20:11 | exhibit 8:19,25 9:4 | feel 31:13 47:13 | 52:6 | great 25:3 |
| entered 12:17 | 14:8,9 15:7,18,21 | 53:5 74:8 | friend 31:6 | Group 4:7 |
| 15:25 | 16:11,21 18:8,16 | feet 21:19 | front 42:13 58:3 | guess 8:9 15:3,4 |
| entitled 15:22 | 18:18,19 26:3,4 | Felshaw 1:21 2:5 | 70:16 71:1 | 24:17 37:23 62:2 |
| envelope 72:23 | 27:7,21 28:1 33:3 | 4:9 | frontage 20:10,10 | 66:9 70:10 77:25 |
| error 40:15 57:8 | 34:5,22 35:2 | fence 21:12,14 | 21:19 36:18 | |
| established 13:1,1 | 37:20 38:12 41:13 | field 19:18 23:15 | full 48:19 | H |
| estate 3:12 6:25 | 42:12,12 58:1,2 | fields 20:12 22:12 | furniture 23:7 | H 2:19 |
| 7:12 11:14 14:10 | 58:14 62:14,15 | file 15:14 16:9 | further 20:6 25:14 | half 24:21 48:9,10 |
| 35:11,14 47:11 | 63:2,17 75:20,20 | 44:17,18,19,22,25 | 44:4 45:22 57:10 | 48:15,17,20 49:23 |
| 61:2 | 75:23 76:7,9,11 | 45:1,4,5,6,10,11 | | 49:24,24 52:4 |
| Evan 3:11 14:15,16 | 76:20 77:1,2,3,5,6 | 46:8 76:4 | G | Hand 10:15 69:20 |
| 14:19,23,25 15:9 | exhibits 3:7 14:7 | find 77:6 | GAFFNEY 2:12 | handed 42:11 |
| 17:3 21:23 22:6 | 16:1,2 42:1 72:25 | fine 37:14 42:10 | Gaily 30:12,21 | handle 48:7 |
| 22:12,20 23:9 | 73:1,7,14,16 | 75:7 | generally 27:1 44:7 | handled 7:19 |
| 24:2 25:10,25 | 78:17 | finish 54:18 65:7 | 49:5 | hands 20:24 |
| 27:9 32:7 41:5,6 | Exit 6:25 7:16 | finished 78:16 | gentleman 63:25 | handwriting 26:10 |
| 46:5,9,12,22,25 | 17:18 26:5,22 | first 4:2 5:10 10:11 | getting 10:6 | 27:10 43:10 |
| 48:6,19 50:6,9,19 | 40:20 44:19,22 | 12:7 14:3 16:25 | give 8:1 18:5,24 | happened 21:23 |
| 50:23 51:5,20,21 | 48:25 49:13 76:2 | 16:25 21:5 24:9 | 49:24 53:2 63:14 | 22:8,25 25:8 |
| 51:23,24 52:21 | 77:20 | 26:4 32:15 37:23 | 78:10 | 61:23 64:13,25 |
| 54:4 55:25 56:1 | explain 59:14 | 43:2,14 63:18 | given 18:21 28:11 | 65:4 66:5 |
| 56:15,18,20 57:14 | expound 44:4 | 64:12,16 65:2 | 41:13 52:25 62:17 | happens 27:14 |
| 57:16,19,22 61:1 | 45:22 57:10 | 69:3 71:21,23 | glad 61:3 | happy 14:17 70:7 |
| 61:5,11,16 63:11 | Ex'd 72:20 | 77:18 | go 4:5 9:18 14:23 | hard 10:6 |
| 64:18 65:5,11,18 | | five 19:6 32:9 33:12 | 18:5 19:15,16,18 | Harold 12:23 |
| 65:25 66:12,14,21 | F | 43:4,11 | 20:12 22:13,14 | head 50:1 58:16 |
| 67:6 68:10,11,17 | fact 8:23 27:20 | flagstone 17:14 | 23:8,13 25:14 | 62:13 63:4 |
| 68:23 78:1 | 56:22 66:6 67:21 | 18:3 | 31:12 32:1 34:2 | health 70:4 |
| Evan's 22:9,18,20 | 74:5 | focus 36:2 | 37:15 40:17 43:1 | hear 24:1 |
| 27:25 46:21 47:9 | fair 25:20 30:1,3 | focused 36:12 | 43:22,23 46:2 | help 63:24 |
| 50:21 69:3 | fairly 77:12 | follow 43:24 57:5 | 47:23 50:14 53:8 | helped 68:17 |
| events 63:13 | Fairway 4:7 | followed 64:3 72:8 | 54:11 55:18 60:25 | helpful 44:9 54:17 |
| exact 8:11 30:2 | Falls 2:15 | following 64:23 | 61:15,16 62:21 | 61:5 |
| 44:10 71:16 | familiar 42:15 | follows 4:3 5:11 | 63:20 68:9 69:20 | Henager 12:23 |
| exactly 58:23 61:14 | family 11:5 36:17 | food 69:21 71:7 | 70:15 74:17 77:11 | high 10:3 |
| 65:16 | 64:8 65:25 | forget 47:25 | goes 38:9 49:8 64:2 | highway 11:3,8,10 |
| Examination 3:4,5 | fancier 15:11 | Fork 19:8 | 64:6 | 11:11,15,16,22 |
| 5:22 42:5 | far 22:13 23:17 | form 29:11 76:10 | going 8:17 15:1 | 20:1,10,10 21:15 |
| exception 29:14 | 34:2 39:23 71:7 | forth 14:21 19:14 | 20:12 21:13 25:21 | 21:17,19 29:3 |
| excluded 43:17 | Farm 15:12 16:22 | forward 51:18 | 27:3 37:17 41:24 | 31:24 32:23 36:4 |
| | 76:24 | | 46:12 48:12 62:24 | 36:18,21 38:2 |

| | | | | |
|---|--|---|---|---|
| 40:24 41:9 69:13 highways 11:12 hill 17:11 hold 76:23 home 7:2 11:17 17:10,14 18:2,2,3 18:4 23:7 30:14 36:17 60:3 64:3 64:21 68:6 74:20 honestly 58:22 hope 42:8 49:4 hospital 62:9 hour 24:21 hours 65:15 house 19:13 21:12 24:5,7,12 50:11 55:13 64:19 65:23 67:22 71:8 hundred 23:2 hurried 19:12 | inside 24:11 64:8 64:21 instance 4:16 45:2 59:15 insurance 32:11 intended 38:18 interest 25:3 52:14 interested 18:2 24:23 25:1 50:13 interesting 49:10 57:5 interrupt 12:15 introduce 5:2 invited 32:7 involved 27:18,19 32:22 39:21,22 issue 62:8 issues 67:10,11,13 iteration 37:23 I-X 1:13 | 13:13 19:10 23:12 35:12 48:5 51:14 55:15 62:7,8 knew 17:4 24:18 32:14 56:3 62:3 75:5 know 6:20 10:18 11:2,15 12:21 13:1,7 14:19 19:2 19:15 25:2 27:15 28:5 29:17,19 30:25 31:11,17 33:24 45:16 46:15 47:10,24 48:7 50:10 54:6,19 55:8 56:21 57:17 57:20 61:15 62:19 64:19 65:15 66:8 67:3,11,13,14,25 68:8,20 70:5,11 73:10,15 74:11 75:4 77:17 knowledge 27:16 known 10:1 32:14 | 77:20 let's 13:16 32:1 43:1,6 47:23 51:18 53:8 57:25 60:22 66:18 70:15 70:19 71:18 76:13 76:19,23 78:9 licensed 7:8,9 46:1 liked 69:21 line 21:12 23:10 34:11,12 lines 69:11 list 49:5 listed 9:19 12:5 14:22 15:2 45:17 47:18 listing 9:22 10:4 12:2,24 15:17 19:1 32:4 42:18 42:19,22 43:7,14 44:16 45:3,23 48:16,18,20 49:1 49:2,8,12,18,25 50:4,5,25 51:21 52:2 57:7 78:7 litigation 6:9 little 22:11 39:19 44:4 45:22 47:7 48:4 52:10 64:11 66:18 live 6:2,3,5 17:11 lived 6:6 living 4:20,21,23 locate 22:6 located 11:8,17,22 29:18 32:22 36:20 39:14 40:22 41:9 71:5 Logan 2:21 47:1 logo 26:5 long 7:7 19:3,5 21:4 24:19 70:1 look 13:10,17 27:20 33:4 42:15 60:22 63:2,11,18,23 64:8 70:19 72:25 73:6,14 | looked 41:14 70:10 73:8,9,15 74:19 74:25 looking 33:8 34:20 76:25 looks 14:9 16:12,15 26:5,10 27:9 62:2 Lori 3:10 29:6 33:3 33:9 34:5 38:6 lose 19:9 48:1 74:9 lost 8:13 44:3,12,15 lot 14:19 20:9 23:2 25:4 27:14 69:20 lovely 18:3 lunch 14:24 Lyle 37:8,10 L.C 2:18 |
| I | J | L | M | |
| ID 2:15 Idaho 1:2 2:4,7,15 4:7,14,18 6:3,5 illness 62:8 imagine 45:15 important 6:14 included 32:22 40:25 indicate 24:22 27:11 39:11,11 40:7 indicated 5:16 11:6 11:20 28:9,22 35:21 40:13 57:8 indicates 32:9 37:22 39:19 40:10 41:5 indicating 32:21 77:21 individual 1:6,11 4:20,21,23 inform 35:10 information 15:17 35:17 inquired 53:10 inquiry 28:23 | Jackson's 26:20 Jeanette 30:12,21 Jensen's 50:15 job 45:24 John 1:12 4:6,23 judge 5:20 Judicial 1:1 4:17 Julian 1:17 2:2 3:3 3:9 4:1,15 5:9 6:1 12:21 32:2 37:19 42:11 54:16 63:1 63:20 64:24 65:22 66:3 77:5 July 17:8 26:10 27:11 32:10 33:18 jump 51:18 June 3:17,18 58:15 61:18 63:12,15 | land 14:21 19:16 21:25 39:13 63:25 Laura 70:12 law 49:7 lawsuit 8:10 leading 36:6,7 40:5 leaf 8:23 leased 70:9 left 23:8 legal 28:11 29:2,9 29:10 37:25 43:3 43:16,17,20 57:12 letter 3:14,17,18 58:8,15,18,21 59:9,12,19,19 60:6,12,23 61:8 61:24 62:2,15,16 63:15 66:6,9 69:5 | lied 41:14 70:10 73:8,9,15 74:19 74:25 looking 33:8 34:20 76:25 looks 14:9 16:12,15 26:5,10 27:9 62:2 Lori 3:10 29:6 33:3 33:9 34:5 38:6 lose 19:9 48:1 74:9 lost 8:13 44:3,12,15 lot 14:19 20:9 23:2 25:4 27:14 69:20 lovely 18:3 lunch 14:24 Lyle 37:8,10 L.C 2:18 | M M 2:13 mailed 33:25 main 2:20 64:7 man 19:16 31:7,13 46:11,17,19 67:25 68:20 map 15:12 16:16 16:21 32:20,21,25 33:10 34:1,8 41:8 41:13 76:24 77:6 77:10 maps 34:25 Mark 59:23,24 60:1 71:12,19,22 72:7 73:17 75:2 75:17 marked 8:19 14:6,8 15:6 26:3 27:7 42:1,12 58:2 75:23 78:17 matter 2:8 4:19 7:3 8:3,24 9:8 64:24 65:11 66:4 mean 13:14 20:21 44:23 48:17 49:4 56:11 66:9 72:14 74:4 meet 10:20 55:6 meeting 25:16 47:6 |

| | | | | |
|--------------------|--------------------|---------------------|---------------------|---------------------|
| meetings 17:5 | need 6:17,19 37:15 | occurred 29:24 | 38:9,14,25 39:7 | paper 19:1 23:5 |
| memory 7:24 | 76:14 | 31:3 | 39:10,16,25 41:12 | 76:14 |
| men 14:17 | needed 19:8 53:19 | occurring 66:13 | 41:16 42:11 43:6 | papers 8:12 44:3 |
| mention 31:18,20 | 59:11 73:13 | 67:8 | 45:10 48:21,24 | 52:12 60:3 74:25 |
| 31:23 32:19 | negative 18:16 | October 1:18 2:5 | 49:10 50:5 51:3,7 | 78:4 |
| mentioned 37:5 | Neither 52:18 | 4:11 | 51:16 52:16 53:8 | paragraph 32:3,9 |
| 44:1 45:16,20 | never 11:14,24 | offer 13:20,22,24 | 54:5 55:17 60:22 | 37:22 38:9,25 |
| 56:9 | 20:16 24:4 25:4 | 14:2,3,12 16:24 | 62:14,23 64:9 | 39:2,10,11,19 |
| mentions 32:3 | 35:22 36:22 38:24 | 17:5 27:22 28:2 | 75:7 76:12 77:15 | 40:10,18 41:4 |
| mess 65:9 | 40:2 46:24 50:20 | 46:25 47:2 51:23 | 78:5,13 | 60:23 64:23 |
| met 10:5,10 12:22 | 51:8 64:20 65:2 | 51:24,24 53:15 | old 48:2 | part 15:16,18 16:11 |
| 14:24 17:18 19:21 | 65:23 67:21 74:24 | 54:1,7,9 55:4 | older 10:2,6 | 30:16 62:16,17 |
| 27:8 30:23 35:15 | 74:24 | offers 13:9,24 | Olsen 2:13 3:5 5:7 | 63:9,18 65:3 |
| 40:19 69:10 70:11 | nice 19:17 50:12 | 46:13,14 53:16 | 5:7,12 12:12,15 | particular 8:8 |
| Mexican 69:21 | 70:8,12 | office 7:2,13 15:24 | 15:25 16:4 28:15 | 27:17 30:10 |
| million 13:15,17 | nine 38:25 39:2,10 | 16:7,25 17:11,16 | 36:6 40:5 41:18 | parties 5:1 47:12 |
| mind 38:17 | 39:12 | 17:18,24 18:6,22 | 41:19,22 42:3,6 | party 5:19 |
| Mine 45:9 | nodded 50:1 58:16 | 19:4,5,21 21:22 | 51:2 54:23,25 | Paul 2:23 12:13,13 |
| minute 76:23 77:17 | 62:13 63:4 | 22:4 25:14 26:22 | 62:23 63:1,8 67:1 | 12:17 |
| minutes 19:6,23 | noon 55:9 | 28:10 30:1,11 | 72:15 73:5 75:22 | Pause 33:6 77:10 |
| 21:7,21 37:13 | north 2:3,20 4:13 | 31:16 35:2 40:19 | 75:24 76:12,19,22 | PECK 2:18 |
| 41:21 62:19 | 21:13 64:5 | 44:25 45:4,5,11 | 77:3,4,15,16 78:9 | penny 52:18 |
| mistakes 74:13 | Northern 2:3 4:12 | 46:8,21 49:12,13 | 78:16 | people 11:15 13:7 |
| Mitch 2:23 4:6 | 5:14,17,18 12:19 | 55:6,19,24 60:14 | Olsen's 36:10 | 13:13,17,18 25:4 |
| moment 8:22 | 28:9,10 35:3 | 60:15 61:2,15 | once 69:22 | percent 49:5,8,9,19 |
| moments 47:25 | 37:24 60:6 75:9 | 68:19 73:10 | one-and-a-half | 51:22,25 52:1,3 |
| money 19:9 77:22 | 75:10,13 | offices 2:3 7:3 | 52:3,7 | peruse 77:5 |
| Montana 1:7 4:20 | Notary 1:22 2:6 | 49:12 | open 77:16 | Phelps 25:12 70:9 |
| months 13:19 | note 5:13 12:16 | oh 14:11 21:16 | opened 24:11 | phone 30:22 65:22 |
| 61:21 66:6 69:19 | 76:8 | 38:20 39:18 47:24 | opinion 53:21 | 70:2 71:13 |
| Montpelier 2:4 | notes 43:23 74:22 | 52:6 74:12 77:2 | ordinarily 27:5 | photocopy 34:8 |
| 4:13 6:6,23 8:13 | 74:24 | okay 5:24 6:4,8,17 | original 33:15 45:5 | pickup 22:11 56:5 |
| Moore 37:7 | notice 3:8 8:25 | 6:18 7:1,15 8:14 | originally 12:4 | piece 23:18 |
| motor 64:3 | 15:16 16:14 | 8:17 9:17,24 | 29:21 | pipes 23:3 |
| moved 8:16 60:3,15 | number 4:24 13:19 | 10:12,23 11:6,13 | ought 41:22 | place 10:16,18 |
| moving 8:15 16:24 | 39:25 42:12 58:2 | 12:1,8 13:5,19,23 | owned 39:8,13 | 18:13 46:15 53:13 |
| muddled 65:9 | 63:3 65:22 | 15:1 16:4,15,24 | | 54:15 67:2,23 |
| muddy 23:14 | | 17:7,23 19:3 | P | places 50:16 67:24 |
| M&M 4:9 | O | 20:25 21:4,8,20 | PA 2:12 | plaintiff 1:8 2:11 |
| N | object 28:15 36:6 | 24:1,14,22 25:6 | page 3:3 9:11 16:20 | 4:20 |
| N 3:1 | 40:5 76:10 | 25:19,24 26:24 | 26:4 33:8 34:5 | plat 32:19,21 33:10 |
| name 5:25 17:13 | objection 36:10 | 27:3 28:3 29:7,10 | 43:2,14 63:11 | 34:8 |
| 28:6 59:21 65:21 | obtained 15:2,23 | 29:16,20 31:2,8 | 64:23 70:19 | please 5:2 |
| 70:12 | 35:1 | 32:9,16,19 33:17 | pages 15:22 43:4 | pleased 40:3 |
| narrative 63:13 | obviously 65:19 | 33:21 34:12,15 | 43:11 | Pocatello 4:7 |
| 64:11 | occasion 21:5 | 35:6,15,20,24 | paid 52:14 | point 8:6 12:1 17:7 |
| Nathan 2:13 5:7 | occasions 36:13 | 36:2,19 37:12 | Pam 26:20 28:6 | 21:11 22:8 25:8 |
| | occur 65:13 | | 60:13,16,20,21 | |

| | | | | | |
|--|--|--|--|---|---|
| 28:7,9 30:23 37:25 38:16 56:23 77:25 78:2 pointing 18:8 points 32:2 polite 74:10 Poppa 2:23 4:6 populated 44:23 possibly 27:12 precise 66:2 preface 64:10 preparation 73:24 prepared 42:23 71:11,17 preparing 44:1 present 2:23 5:15 12:18 30:17 pretty 5:18 16:18 25:15,17 37:11 previous 5:15 63:17 69:7 previously 6:12 8:1 8:2 9:8 14:6 26:3 34:23 40:13 price 12:5,25 13:2 13:8,12,16 40:11 57:7 primarily 75:16 principals 12:19 printing 26:19 prior 6:4,15 13:23 74:18 probably 13:11 21:7 24:21 28:5 38:6 54:16 65:16 66:25 68:16 73:8 76:14 problem 69:2 70:6 problems 8:10 31:21 70:14 proceeded 12:2 properly 53:6 properties 14:20 46:14 50:9 56:17 63:24 64:4,18 65:18,19,24 property 9:19,22 | 11:4,7,22 12:25 13:25 14:16,22 15:4 17:14,25 18:13 19:4,7,14 19:24 20:4,7,14 20:18,19,25 21:1 21:5,11,13 23:4,7 23:8,10,11,24 24:2,23 25:7,10 25:21 28:12,13 29:2,15,21,22 31:8,21,24 32:5 32:21,22,24 33:13 35:10,13,16,22 36:3,12,14,15,18 36:20 37:4,10 38:1,19 39:13 40:16,21,21,23,24 41:1,8 42:20 44:22 45:17,20,24 45:25 46:12 48:13 53:11,15 54:11 55:2,5,12,18 57:9 57:18 58:10 59:10 61:3,6,17,25 64:5 64:7,17 68:1 69:11 70:9 72:3,4 provide 13:5 Providence 1:12 4:22,23 Public 1:22 2:6 pull 76:23 pulled 20:3 purchase 3:12 14:9 40:11 45:19 46:5 46:25 47:2 53:12 54:13 purchased 48:13 purchasing 24:23 purposes 6:9 pursuant 76:2 put 5:17 11:24 15:13 28:6,18 45:1,3,8,18 47:9 p.m 78:18 | 38:17,20 39:25 40:7 43:18 54:18 54:19 64:9,10 65:7,10 66:2,10 72:16 73:5 questioning 43:24 questions 6:13,14 24:16 36:7,10 41:17,18 69:8 quickly 53:20 quite 10:19 36:7 53:20 | R ranch 10:15 13:11 14:18 17:15 69:18 69:20 ranches 17:2 45:18 50:12 Randy 59:1,4,6,22 71:12,20,21,23 75:2,17 Randy's 72:8 read 28:5 39:3 40:18 62:19 65:2 reading 29:13 ready 10:18,21 real 3:12 6:25 7:11 11:14 14:9 31:12 32:22 35:11,13 47:11 61:2 70:12 74:8 realize 68:18 really 13:21 14:18 17:3 19:2,16 25:2 30:25 31:10 50:7 53:24 59:13,16 61:13,13 62:2 65:24 67:13 71:25 73:10,13 74:16 realtor 7:7 Realty 6:25 7:17 17:19 26:5,22 40:20 44:19,22 48:25 63:12 76:2 77:20 reason 42:8 76:12 reasonable 13:16 | recall 8:3 9:19 10:8 10:23 12:9 13:23 15:19 17:7 22:9 25:17 28:23,25 29:4,11 30:9 33:5 33:17,21 35:24 38:5 39:16,21 41:12 46:9 51:3 52:20 58:9,17 69:4,9 73:12 recalls 62:6 receive 52:16 received 13:24 16:25,25 32:10 33:17 35:2 37:23 38:11 63:22 76:1 76:17 Recess 37:18 62:25 78:15 recognize 15:7 58:5 recollecting 44:2 recollection 7:24 8:7 18:21 25:21 26:15 record 4:6 5:13,18 12:16 28:16,18,19 34:4 37:17 41:24 41:25 42:2,4 62:22,24 76:4 78:14 recorder's 15:24 records 29:23 44:14 45:14 76:1 Recreation 63:12 red 32:24 33:7,15 34:16 reduced 40:11,16 reducing 13:10,12 reduction 40:12 refer 15:21 reference 24:1 referenced 43:14 43:20 referred 61:11 referring 16:20 34:21 46:19 regard 9:21 13:6 | 29:5 45:19 71:15 76:4 relates 38:25 39:1 relating 4:2 5:10 relation 66:9 67:9 remark 76:19 remember 8:11 9:16 12:4 16:5 21:18 29:13 35:19 39:4 47:5 51:22 55:7 58:22 59:9 59:21 60:7 64:13 69:17 71:14 72:1 72:12,18 remembering 11:12 REPORTED 1:20 reporter 2:6 4:9 5:3 54:17 65:8 Reporting 4:10 represent 5:3 28:8 35:20 47:11 62:5 62:15 63:8 75:25 representation 3:15 28:20 representative 5:13 28:8 representatives 75:9,13 represented 47:14 52:21,22 53:5 representing 5:7 28:17 47:16 51:17 53:4 represents 5:17 request 63:10 requested 78:19 residence 40:22 64:7 residing 1:6,11 6:4 6:22 respect 7:23 respond 29:7 responding 6:16 response 53:17 returned 77:22 reverse 50:22 |
|--|--|--|--|---|---|

| | | | | |
|--|---|--|---|--|
| review 72:11 73:6 reviewed 27:8 reviewing 8:5 ride 31:12 right 9:6,9 11:17 15:14,18 16:4 19:20 25:6 28:2 30:18,22 34:7 35:8,23 41:17 42:3,25 43:22 44:18 45:12,16 47:12,23 49:6,20 51:10,15,22 52:9 53:2,4 54:10,14 56:2,23 57:25 61:14,22 62:14 63:1 64:22 65:3 67:12,16 68:13 75:24 76:19 78:9 river 23:12 road 22:18 36:16 57:14 72:6 Robert 4:21 Rod 4:9 rode 10:2 22:17 Rodney 1:21 2:5 Roger 1:10 4:22 5:5 9:23 14:23 15:4,23 16:7,13 25:11 40:17,17 42:20 47:1 51:17 64:5 69:9,15,18 70:8 Roger's 37:8 Romrell 37:7 room 5:14 12:17 rule 49:7 rules 47:10 Ryan 51:2 | 46:5 48:15,19,23 48:23 67:24 68:18 68:23 70:7 sales 7:9 48:8 salesperson 7:12,16 satisfied 40:3 save 53:20 77:13 saw 17:13 34:23 46:16,24 57:15 64:21 65:21 saying 21:21 44:11 50:13 64:10 66:19 says 16:22 26:6 43:3,10 46:22 60:23,24 63:19 70:13,20 scares 13:17 school 10:2,3,3 seats 22:11 second 24:20 25:7 25:24 38:11 55:20 55:21 56:10,11 63:11 secretary 26:20,21 60:17 section 34:10,12,13 43:2 see 8:20 10:14 19:15 21:11,18,23 25:5 26:13 31:11 32:13 33:4 40:17 43:4 50:14 54:11 55:5 62:1 64:3,4 69:19,21 70:3 76:13 77:5,10 78:11 seen 30:4 44:8 56:20 68:1 73:4,9 sell 10:7,18 11:2,7 11:21 14:18 23:6 37:1 38:18,23 seller 3:15 seller's 49:17 selling 10:4,22 42:21 48:20 49:3 49:9,15,18 50:3,6 78:6 | send 28:6 72:21,24 sense 35:1 sent 26:16,16 63:9 71:17 72:19 73:16 74:20 sentence 41:4 separately 22:16 September 3:14 70:21 serious 10:19 service 15:11,12 71:6 76:24 Services 16:22 set 13:7,13 49:7 settlement 52:12 seven 38:9 Shaffer 59:23,24 72:7 73:17 75:2 75:17 shares 20:8 23:2 sheet 26:4 shocked 67:15 70:6 70:13 shorter 34:9 Shorthand 2:6 shortly 65:14 show 14:5,7 15:6 17:17 19:16 21:25 23:10 24:5 26:2 27:6 33:3 45:25 46:2 56:4 57:11 57:12 61:3,16 63:24 showed 18:4 19:12 20:11,25 24:7 25:3,10 29:21 36:15 40:22 50:12 55:13,18 56:15 58:9 64:16,21 65:25 66:1 showing 8:18 14:21 35:9 36:2,13 40:15 57:9 59:9 61:5 shown 16:18 50:9 56:17 57:18 64:18 65:17,19 68:16 | 69:3 side 11:3,8,16,18 11:21,22,23,24 20:4,13,17,22,23 21:2,14,17 23:20 23:24 24:3 28:12 29:3,15 31:24,24 34:7 36:4,16,20 38:1,2,19,23 39:14 40:24 41:9 48:16,20,20 49:8 49:9,15 51:22 57:14 69:12 72:5 sides 39:5,13 sign 17:13 65:22 70:24 signature 9:10,12 58:12 70:21 78:19 signed 51:4,8 58:18 60:13 63:11 70:25 72:11,14,17,22 73:1,7,21 similar 63:14 sister 62:8 sit 25:19 sitting 74:23 six 37:22 49:5,19 Sixth 1:1 4:17 Skinner 3:11 14:16 25:25 27:9,18 41:5,6 46:6 51:20 52:21 57:4 61:2 61:11 63:12 65:11 67:7,18 78:1 slow 19:20 small 40:15 smaller 57:9 smart 49:4 Soda 49:14 Soil 15:10 sold 14:19 19:7 35:13,13 37:7,9 49:13 60:3 69:12 somewhat 39:1 son 74:8 sons 11:25 14:24 sorry 12:15 14:11 | 47:24 54:22 59:2 63:6 sounds 30:16 77:25 speak 9:21 special 48:25 specific 18:20 specifically 35:24 36:24 38:5 41:12 spent 21:20 split 51:21 spoke 29:4 Springs 49:14 sprinkler 23:3 SRT-969 1:21 ST 2:12 stamp 26:13 33:1 stamps 34:16,18,22 started 20:11 21:11 21:13 state 1:2 2:7 4:18 5:2,24 stated 28:17 29:2 statement 41:10 65:1 66:3 69:13 states 53:1 64:23 stating 28:16 stay 69:19 Stephens 1:10 4:21 4:22 5:6 6:10 7:21 9:18 12:25 20:3 23:8 32:4 36:17 37:8 38:18 40:21,21,23,25 41:8 45:20 47:6,8 51:13 52:19 53:11 60:8 64:5 69:10 69:15,25 Stephens's 42:20 70:11 Steve 63:23 65:18 66:1 68:4,6 Steven 1:5 4:19 5:8 17:9 25:12 26:8 40:19,22 41:7 51:18 53:9 68:5 69:10 stipulate 76:16 |
|--|---|--|---|--|

| | | | | |
|--|--|---|---|---|
| 77:13 stop 78:10 Store 71:7 straight 9:5 55:1 Street 2:14 64:6 stressful 74:11 stretch 37:15 subject 33:13 subpoena 76:2,3,18 suggest 36:11,19,23 suggested 38:22 suite 2:4,20 4:13,14 summarize 11:20 summary 41:1 summer 63:19 summertime 69:18 supplemented 44:23 supposed 38:3 supposedly 8:10 sure 12:20,22 21:18 29:1 51:6 52:25 58:19 72:1 swear 5:3 switch 41:22 sworn 4:2 5:10 6:12 | 70:18 tandem 23:5 tape 41:20,21 tapes 41:22 tax 16:14 technically 50:3 tell 4:2 5:10 8:6,23 13:8,13 22:8,19 22:25 26:21 28:7 28:25 30:2,9 36:11 39:23 54:8 56:16 59:11 61:14 71:24 telling 39:4 69:10 tells 53:4 temper 74:10 terms 52:23 terrible 11:11 test 11:1 testified 4:3 5:11 64:1 testimony 3:3 28:16 69:7 74:15 Thank 5:21 6:21 28:3,19 41:17 42:7 43:22 53:8 54:22,23 they'd 13:8 thing 10:6 15:10 19:11 23:6 31:19 31:25 37:11 46:12 68:21 75:19 things 8:11,12 15:3 20:12 26:19 28:17 35:5 43:16,25 64:25 66:5 74:19 74:21 76:5 think 10:4 12:6,6 13:3,12 14:18 16:13 19:1 20:9 21:17 25:10,11,12 32:5,17 33:25 35:4 41:16 42:3 44:15 49:16 53:23 54:19 55:16 58:1 59:8 62:4 65:20 67:17,20 70:11,25 | 71:22,25 73:13 76:10 Thornock 3:10 38:6 Thornock's 33:4,9 34:6 thought 19:10 29:6 48:1 55:22 57:13 68:17 70:6,12 72:2,3 73:9,12 three 8:6 17:1 45:18 49:8,9,15 50:12 51:22,25 52:1 73:2 Thursday 69:22 time 5:20 6:20 7:3 9:14,18 11:6 12:7 13:14 14:25 15:1 15:2 17:21 20:7 24:6,9,20,24 25:16,24 30:2,3 30:17 31:3 35:9 35:15 38:16,21 46:17 51:6,13 53:9,11 55:6,7,9 55:20,21 56:7 61:5 63:15,21,22 64:20 66:12,24 67:8 68:17 69:19 77:11,13 timer 32:13 44:5,8 44:11 times 9:25 29:20 66:11 title 2:3 4:12 5:14 5:17,19 12:19 15:11 16:7 28:9 28:10 32:11,20 33:22,25 35:3 37:24,24 38:11 60:6 75:9,10,13 today 4:11 6:8,13 9:2 25:19 64:12 today's 73:25 told 13:15 17:15,25 19:10,13 20:8 21:16,23 23:1 | 25:11 30:17,20 37:2 39:5,12 40:10 41:2 46:9 50:20 53:14 56:16 57:22 61:1 64:12 64:20 65:16,23 66:11 67:21 68:11 68:15 69:14 72:5 74:9 top 26:5,9,13 27:11 43:10 tough 37:11 tractor 23:5 train 48:1 transaction 7:20,24 8:8 44:2 66:12 67:8 69:24 76:5 78:2 trees 76:21 tried 8:11 9:15 44:5 truck 21:24 22:18 56:4,6 61:4,4 true 45:13 62:11,12 64:1 trust 11:4,25 20:20 truth 4:2 5:10 try 13:8 43:24 54:20 72:15 trying 14:17 58:9 68:9 turn 9:11 37:20 42:25 43:6 57:25 64:22 65:9 76:6 77:19 twice 25:22 35:25 two 22:1 36:13 43:2 50:15 65:20 67:24 68:22 type 60:13 typically 27:4 49:23 | 38:8 43:9 45:12 48:11 49:21 52:8 54:14 55:3,23 61:20 68:7 71:10 73:20 74:3 understand 6:10,14 6:15 36:9 understanding 56:19,22 USDA 16:22 35:1 use 16:2 41:7 UT 2:21 Utah 1:12 4:23 19:7 U.S 71:2,3,4 <hr/> V <hr/> valley 6:7 50:12 van 31:11 verbally 41:7 verify 28:10 versus 4:20 31:24 videographer 4:5,8 37:17 41:21,24 42:2 62:24 78:14 videotape 4:14 VIDEOTAPED 1:17 2:1 View 6:7 visit 14:23 25:7,7 41:5,6 51:12 56:10,11 visited 35:16 36:14 71:13,21,23 74:1 visiting 70:4 vs 1:9 <hr/> W <hr/> walk 21:9 walked 21:10 46:22 46:23 69:11 want 9:17 19:16,18 25:2 26:2 28:15 37:1 43:22 48:4 54:25 57:5 66:24 67:3 74:13 76:12 78:12 wanted 13:4,14 |
|--|--|---|---|---|

| | | | |
|---|--|---|---|
| 19:13,15 28:18 29:1 31:1,10,11 40:7 63:23 74:7 warranty 15:17,22 wasn't 14:14 20:12 39:9 42:8 46:15 71:1 78:6 water 20:8 23:2,3 way 11:1 19:9 23:13 42:7 47:10 49:11 50:24 64:15 72:23 76:13 week 69:22 71:16 went 13:19 15:9 19:6 21:21 22:12 23:4,9,17 24:11 28:9 47:1 51:12 55:20,21 56:20 64:7,8 67:22 70:10 74:20 weren't 30:16 68:22 west 11:3,8,18,21 11:22 20:4,13 21:2,14,17 23:11 23:20 28:12 29:2 31:23 32:22 36:4 36:16 38:1,2,19 39:14 41:9 57:14 69:12 72:5 we'll 5:19 6:12 8:5 9:4 12:16 16:2 55:18 we're 16:20 28:16 42:3 49:12 70:18 76:20 we've 25:4 29:23 32:5 65:7 white 16:17 18:7,13 18:15 wife 22:9,20 25:11 25:12 47:1 70:11 willing 11:7,21 38:22 wise 54:8 witness 5:4 16:5 36:8 50:1 54:22 | 58:16 62:13 63:4 63:6 66:25 73:3 woman 14:17 work 76:14 worked 14:20 42:10 working 30:13 44:21 56:18 68:23 works 59:22 worried 74:8 wouldn't 14:15 27:19 48:22 write 28:2 44:7 50:7 58:20 59:8 59:12 62:4 writes 51:23 writing 27:25 written 61:18 66:6 77:21 wrong 15:10 29:18 29:19 62:2 wrote 27:14 51:23 51:24 52:15 60:12 60:14 <hr/> X X 3:1 <hr/> Y Yeah 27:22,24 30:25 60:24 61:9 62:1 72:15 77:3 year 8:16 10:11 66:25 67:18 years 7:14 8:6 10:1 10:2 37:6 Young 4:6 younger 31:6 <hr/> Z Zions 71:1,1 <hr/> \$ \$50,000 52:14 <hr/> 1 1 2:4 15:18,21 16:11 33:3 34:5 | 10 4:24 7:13 19:6 19:23 39:19 61:21 66:6 1031 19:8 53:20 11 4:12 40:10 11:00 2:4 12 40:18 12:55 78:18 123 6:6 13 3:18 41:4,21 13th 63:15 16th 63:12 17th 30:3 18 3:17 18th 30:3 58:15 61:18 19 26:3,4 27:21 28:1 1978 7:8 1981 7:10 <hr/> 2 2 15:7 18:8,16,18 18:19 34:22 35:2 38:12 41:14 77:2 77:3 20 21:7,20 27:7 20th 70:20 2007 7:5,15 8:6 10:9 17:8 32:10 33:18 63:19 2008 3:17,18 58:15 61:19 63:12,16 2010 1:18 2:5 3:14 4:11 70:21 21 3:8 8:19,25 34:13 21-26 78:17 2105 2:14 22 3:9 9:4 34:13 37:20 22nd 30:4 23 3:10 24 3:11 25 3:12 21:7,21 27:11 76:9,11,20 26 3:14 26th 26:10 27:12 | 30:5 2635 4:7 27 3:15 42:1,13 278 39:24 57:16 28 3:14,17 42:1 58:2,14 29 3:18 42:1 62:15 63:3 <hr/> 3 3 14:8,9 16:21 3rd 29:24 30 11:11 20:1 32:23 40:25 41:9 69:13 75:21,22,23 300 2:20 57:13 31st 32:10 3300 21:19 3600 21:19 399 2:20 <hr/> 4 40 37:7 42 3:5,15,17,18 <hr/> 5 5 3:4 50,000 52:17 <hr/> 6 60 13:11 680 4:13 689 2:3 <hr/> 7 78 3:8,9,10,11,12 3:14 <hr/> 8 8 1:18 2:5 8th 4:11 64:6 800,000 40:12 57:8 83254 4:14 83404-7495 2:15 84321 2:21 <hr/> 9 900 12:7 900,000 40:13 57:7 |
|---|--|---|---|



000034

Affid Plntff Motn Reconsider 237

#21

Affid Plntf Mptn Reconsider

238

Brad H. Bearnson (#7086)
BEARNSON & PECK, L.C.
399 North Main, Suite 300
Logan, Utah 84321
(435) 787-9700 - Phone
(435) 787-2455 - Fax
bbearnson@cachelaw.com

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109
rcb@racinelaw.net

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

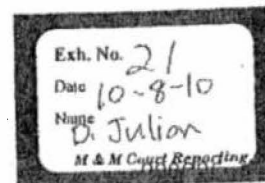
STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X.)
)
Defendants.)
_____)

Case No. CV-09-183

**NOTICE OF TAKING DEPOSITION
OF DOROTHY JULIAN**

PLEASE TAKE NOTICE that on Friday, October 8, 2010, beginning at 11:00 a.m., and
continuing thereafter until completed, counsel for Defendant Roger L. Stephens will take the

NOTICE OF DEPOSITION
OF DOROTHY JULIAN - Page 1



Affid Plntf Motn Reconsider

239

deposition of DOROTHY JULIAN, at the Clover Creek Inn & Suites, Business Conference Suite, 243 North 4th Street, Montpelier, Idaho, 83254, or such other place as the parties may mutually designate.

This deposition will be on oral interrogatories and is taken pursuant to the Idaho Rules of Civil Procedure. You are invited to be present and examine the witness.

This deposition will be taken before a certified reporter and notary public and may be recorded by sound and visual/video means. Defendant reserves the right to use the audio and/or video recordings of this deposition at the time of trial.

DATED this 30th day of September, 2010.

BEARNSON & PECK, L.C.



Brad H. Bearnson
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of September, 2010, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Nathan M. Olsen
Beard, St. Clair, Gaffney PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495
nathan@beardstclair.com

☒ U. S. Mail
Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

M&M Court Reporting
421 West Franklin Street
Boise, Idaho 83702
(208) 345-8800 - Fax

☐ U. S. Mail
Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile

Mary Lynn Andreason

22

not Plott Math Reconsider 242

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109
rcb@racinelaw.net

Brad H. Bearnson
Bearnson & Peck, L.C.
399 North Main, Ste 300
Logan, Utah 84321

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X,)

Defendants.)
_____)

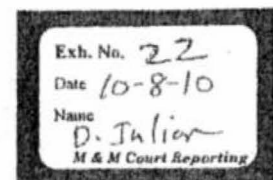
Case No. CV-09-183

AFFIDAVIT OF DOROTHY JULIAN

STATE OF IDAHO)
: ss.)
County of Ada)

DOROTHY JULIAN, being first duly sworn on oath, deposes and states as follows:

AFFIDAVIT OF DOROTHY JULIAN - Page 1



Affid Plntf Mptn Reconsider 243

1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.

2. In 2007 I was a real estate agent for Exit Realty of Bear Lake.

3. In 2007 I was the listing agent of the Roger L. and Barbara L. Stephens Family Trust property located on the west side of Highway 30 north of Montpelier ("Stephens Property").

4. As the listing agent of the Stephens Property, I worked with Roger L. Stephens to determine what property the Roger L. and Barbara L. Stephens Family Trust desired to sell. Roger L. Stephens informed me that the Roger L. and Barbara L. Stephens Family Trust owned property located both east and west of Highway 30. I was instructed by Roger L. Stephens that the Stephens Property for sale was to include only the property located west of Highway 30.

5. On or about July 31, 2007, I received a copy of the Commitment for Title Insurance on the Stephens Property, referenced as Order No. NTBL-1183 ("Title Commitment"), from Northern Title Company of Idaho ("Northern Title"). The Title Commitment contained a plat map with arrows indicating that the property involved included only real property located west of Highway 30. A true and correct copy of the Title Commitment is attached hereto as Exhibit "1" and incorporated herein by reference.

6. Shortly after receiving the Title Commitment, I contacted Northern Title to confirm that the Title Commitment (and thus the property for sale by the Stephens Family Trust) only included property located west of Highway 30. Northern Title verbally confirmed to me that the Title Commitment only included property located west of Highway 30.

7. Sometime after that but before the August 3, 2007 closing, I received a second copy of the Commitment for Title Insurance on the Stephens Property, referenced as Order No. NTBL-

1183 ("Second Title Commitment"), from Northern Title. The Second Title Commitment contained a plat map with arrows indicating that the property involved included only real property located west of Highway 30. A true and correct copy of the Second Title Commitment is attached hereto as Exhibit "2" and incorporated herein by reference.

8. As the listing agent for the Stephens Property, I had my phone number listed on the sales sign. At approximately the end of July 2007, I received a phone call from Steven Cummings, who had been driving around the area and saw the sign by the residence located on the Stephens Property.

9. I indicated to Stephen Cummings that the Roger L. and Barbara L. Stephens Family Trust owned properties located both east and west of Highway 30, that Highway 30 split the land owned by the Roger L. and Barbara L. Stephens Family Trust, and that only the land located to the west of Highway 30 was for sale.

10. I indicated to Steven Cummings that the property surrounding the residence to the west of Highway 30 was approximately 278 acres. I also indicated to Steven Cummings that the property for sale located west of Highway 30 included the residence, all barns and sheds, 900 water shares of Bennington gravity flow water, and 100 water shares of Montpelier water.

11. I also told Steven Cummings that the purchase price of the Stephens Property had been reduced to \$800,000, that the property was currently under lease by the Phelps brothers from Bennington, and that there was currently an offer on the Stephens Property but that anyone with any interest should consider a backup offer.

12. I then met Steven Cummings at the office of Exit Realty of Bear Lake and again drove him to the Stephens Property. While at the Stephens Property, I showed Steven Cummings the

residence located on the Stephens Property and emphasized that no property on the east of Highway 30 was included in the sale of the Stephens Property.

13. After showing Steven Cummings the Stephens Property, I drove Steven Cummings back to the office of Exit Realty of Bear Lake and we met with Evan Skinner (another real estate agent at Exit Realty of Bear Lake). I then accompanied Evan Skinner in his truck as he drove Steven Cummings around the Stephens Property and showed Steven Cummings the areas of the Stephens Property that were not accessible using my car. During this visit Evan Skinner and I emphasized to Steven Cummings, both verbally and with the use of a map, that the Stephens Property for sale was located only on the west side of Highway 30.

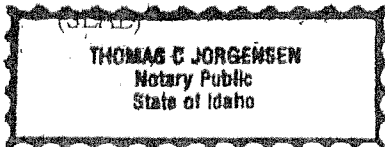
14. As the listing agent of the Stephens Property, I gave each potential buyer of the Stephens Property certain documentation describing the specifics of the Stephens Property. The documentation included a copy of a map from the USDA Farm Service Agency displaying the land for sale (all on the west side of Highway 30). A true and correct copy of the map from the USDA Farm Service Agency is attached hereto as Exhibit "3" and incorporated herein by reference. I gave Steven Cummings a copy of the map from the USDA Farm Service Agency and again indicated to Steven Cummings that the Stephens Property for sale was all located west of Highway 30.


FURTHER SAITH AFFLIANT NAUGHT.

Dated this 20 day of September, 2010.


DOROTHY JULIAN

SUBSCRIBED AND SWORN TO before me this 20 day of September, 2010.




NOTARY PUBLIC FOR IDAHO
Residing at: US Bank
My Commission Expires: Aug 7, 2014

CERTIFICATE OF SERVICE

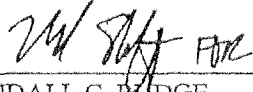
I HEREBY CERTIFY that on this 21 day of September, 2010, I served a true and complete copy of the foregoing document on the following persons in the manner indicated:

Nathan M. Olsen
Beard, St. Clair, Gaffney PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495

☒ U.S. Mail/Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Fax

Brad H. Beamson
Beamson & Peck, L.C.
399 North Main, Ste 300
Logan, Utah 84321

☒ U.S. Mail/Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Fax



RANDALL C. BUDGE

EXHIBIT "1"
TO AFFIDAVIT OF DOROTHY JULIAN

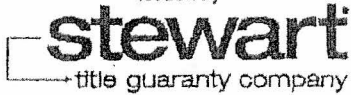
000044

Affid Plntf Motn Reconsider

249

ALTA Commitment (6/17/05)

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by

stewart
title guaranty company

Stewart Title Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.


This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

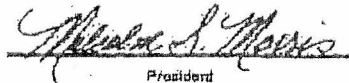
This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.

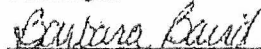

Chairman of the Board


title guaranty company




President

Countersigned:


Authorized Countersignature

Northern Title Co. of Idaho
Company Name

Preston, ID
City, State

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at: <http://www.altis.org/>.*



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

Closing/Escrow inquiries to:
LORI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA BAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTBL-1183

1. Effective Date: May 30, 2007 @ 5:00 PM
2. Policy or policies to be issued:

A. ALTA Owner's (6/17/06)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount: \$800,000.00
Premium: \$2,330.00

B. ALTA Loan (6/17/06)

Coverage

Proposed Insured;

Amount: \$0.00
Premium: \$0.00

C. Endorsements: \$0.00

3. The estate or interest in the land described in the Commitment and covered herein is:
FEE SIMPLE
4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L.
STEPHENS FAMILY TRUST

5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is
described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS: BEAR LAKE COUNTY

"EXHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

SCHEDULE B - SECTION II

Order No. NTBL-1183

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.*
- (2) Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.*
- (3) Easements, claims of easement or encumbrances which are not shown by the public records.*
- (4) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.*
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.*
- (6) Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by public records.*

*Paragraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section II.

(See Special exceptions beginning on the next page)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS:

1. Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$183.54.
Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$1,134.00.
Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$135.10.
Tax Serial No. 3168
2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL EASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
5. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 30
RECORDED: MAY 22, 1956
INSTRUMENT NO.: 71884

RECORDED: AUGUST 1, 1956
INSTRUMENT NO.: 72172

RECORDED: SEPTEMBER 20, 1956
INSTRUMENT NO.: 72343

RECORDED: NOVEMBER 15, 1960
INSTRUMENT NO.: 79310

(Continued)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

7. An Easement for the purpose shown below and rights incidental thereto as set forth in a document
- | | |
|-------------|------------------------------|
| Granted to: | UTAH POWER AND LIGHT COMPANY |
| Purpose: | Public Utilities Easement |
| Dated: | SEPTEMBER 5, 1957 |
| Recorded: | FEBRUARY 28, 1958 |
| Entry No.: | 74487 & 74488 |

8. RIGHT OF WAY OPTION
- | | |
|-----------------|-----------------|
| RECORDED: | AUGUST 21, 1973 |
| INSTRUMENT NO.: | 101374 |

9. OIL AND GAS LEASE
- | | |
|-----------------|-------------------|
| RECORDED: | FEBRUARY 11, 1976 |
| INSTRUMENT NO.: | 107445 |

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

| | |
|-----------------|--------------|
| RECORDED: | JULY 9, 1976 |
| INSTRUMENT NO.: | 108991 |

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

| | |
|-----------------|---------------|
| RECORDED: | JUNE 24, 1977 |
| INSTRUMENT NO.: | 112523 |

ASSIGNMENT OF OIL AND GAS LEASES

| | |
|-----------------|---------------|
| RECORDED: | JULY 18, 1977 |
| INSTRUMENT NO.: | 112668 |

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

| | |
|-----------------|------------------|
| RECORDED: | DECEMBER 9, 1977 |
| INSTRUMENT NO.: | 113901 |

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

| | |
|-----------------|-------------------|
| RECORDED: | DECEMBER 28, 1977 |
| INSTRUMENT NO.: | 114109 |

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

| | |
|-----------------|-----------------|
| RECORDED: | AUGUST 13, 1980 |
| INSTRUMENT NO.: | 122412 |

(Continued)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124283

ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124284

10. RIGHT OF WAY EASEMENT

RECORDED: MAY 26, 1914
INSTRUMENT NO.: 10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

RECORDED: MARCH 7, 1997
INSTRUMENT NO.: 166238

NOTE: The policy of title insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC.
ROGER L. STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction fails to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

Barbara Baud
Examiner

NTBL-1183

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B-SECTION 1
REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

- (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to insured.
- (b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the issuance of any policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any items herein below.

In addition to the foregoing, the following requirements must be complied with, to-wit:

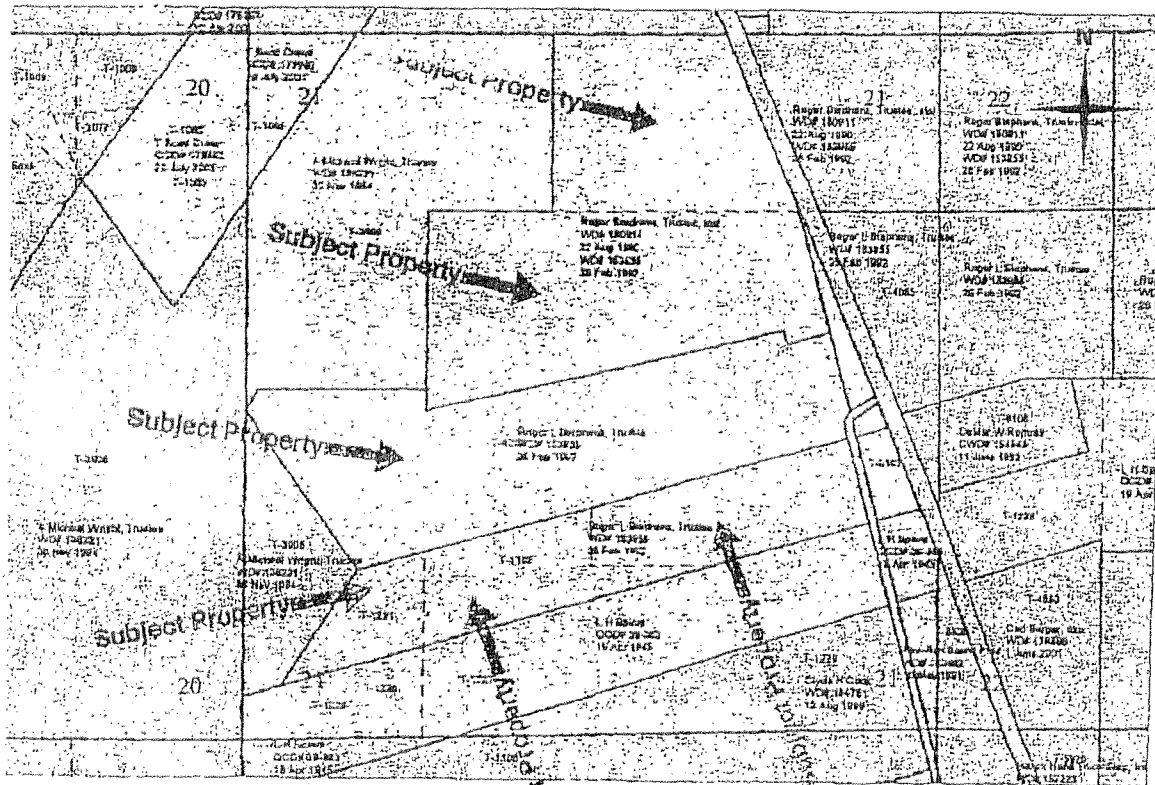
1. PURCHASE AND SALE AGREEMENT.
2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
5. THREE BAR RANCHES, INC. NEEDS TO RENEW ARTICLES OF INCORPORATION WITH THE STATE OF UTAH.

000053

Affd Plntf Motn Reconsider

258

Section 21, Township 12 South, Range 44 East of the Boise Meridian



This Plat is provided as
an accommodation only and
does not constitute as actual
survey of the premises.

EXHIBIT "2"
TO AFFIDAVIT OF DOROTHY JULIAN

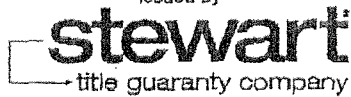
000055

Affid Plntf Motn Reconsider 260

ALTA Commitment (5/17/06)

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by



Stewart Title Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.

Chairman of the Board



President

Countersigned:

Authorized Countersignature

Northern Title Co. of Idaho
Company Name

Preston, ID
City, State

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at < <http://www.alta.org> >.



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2028, Houston, Texas 77252.

Closing/Escrow inquiries to:
LORI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA BAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTBL-1183

1. Effective Date: May 30, 2007 @ 5:00 PM
2. Policy or policies to be issued:

A. ALTA Owner's (6/17/06)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount: \$800,000.00
Premium: \$2,330.00

B. ALTA Loan (6/17/06)

Coverage

Proposed Insured:

Amount: \$0.00
Premium: \$0.00

C. Endorsements: \$0.00

3. The estate or interest in the land described in the Commitment and covered herein is:
FEE SIMPLE
4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L.
STEPHENS FAMILY TRUST
5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is
described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS: BEAR LAKE COUNTY

000058

Affid Plntf Motn Reconsider

263

"EXHIBIT A"

PARCEL A

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY 30.

PARCEL D

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 32.50 CHAINS TO THE PLACE OF BEGINNING.

PARCEL E

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL F

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL I

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO,
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

000059

Aff'd Plntf Motn Reconsider 264

SCHEDULE B - SECTION II

Order No. NTBL-1183

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.*
- (2) Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.*
- (3) Easements, claims of easement or encumbrances which are not shown by the public records.*
- (4) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.*
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.*
- (6) Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by public records.*

*Paragraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section II.

(See Special exceptions beginning on the next page)

000060

Attd Plntf Motn Reconsider

265

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS:

1. Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$183.54.
Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$1,134.00.
Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$135.10.
Tax Serial No. 3168
2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL EASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
5. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 50
RECORDED: MAY 22, 1956
INSTRUMENT NO.: 71884

RECORDED: AUGUST 1, 1956
INSTRUMENT NO.: 72172

RECORDED: SEPTEMBER 20, 1956
INSTRUMENT NO.: 72343

RECORDED: NOVEMBER 15, 1960
INSTRUMENT NO.: 79310

(Continued)

000061

Added Plntf Motn. Reconsider

266

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

7. An Easement for the purpose shown below and rights incidental thereto as set forth in a document

Granted to: UTAH POWER AND LIGHT COMPANY
Purpose: Public Utilities Easement
Dated: SEPTEMBER 5, 1957
Recorded: FEBRUARY 28, 1958
Entry No.: 74487 & 74488

8. RIGHT OF WAY OPTION

RECORDED: AUGUST 21, 1973
INSTRUMENT NO.: 101374

9. OIL AND GAS LEASE

RECORDED: FEBRUARY 11, 1976
INSTRUMENT NO.: 107445

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: JULY 9, 1976
INSTRUMENT NO.: 108991

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: JUNE 24, 1977
INSTRUMENT NO.: 112523

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED: JULY 18, 1977
INSTRUMENT NO.: 112668

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: DECEMBER 9, 1977
INSTRUMENT NO.: 113901

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: DECEMBER 28, 1977
INSTRUMENT NO.: 114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: AUGUST 13, 1980
INSTRUMENT NO.: 122412

(Continued)

000062

Add Plntf Motn Reconsider

267

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124283

ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124284

10. RIGHT OF WAY EASEMENT

RECORDED: MAY 26, 1914
INSTRUMENT NO.: 10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

RECORDED: MARCH 7, 1997
INSTRUMENT NO.: 166238

NOTE: The policy of title insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC.
ROGER L. STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction fails to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

Examiner

000063

Aff'd Plntf Motn Reconsider 268

NTBL-1183

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B-SECTION I REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

- (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to insured.
- (b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the issuance of any policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any items herein below.

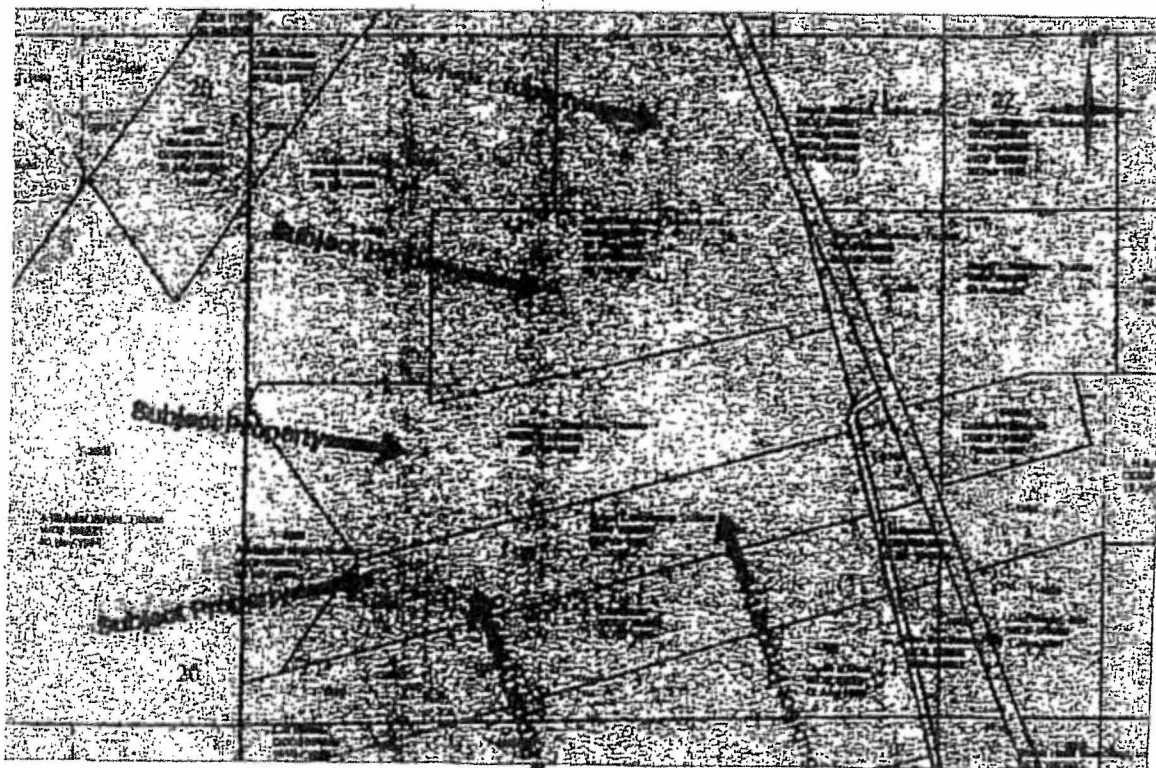
In addition to the foregoing, the following requirements must be complied with, to-wit:

1. PURCHASE AND SALE AGREEMENT.
2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
5. THREE BAR RANCHES, INC. NEEDS TO RENEW ARTICLES OF INCORPORATION WITH THE STATE OF UTAH.

000064

Affid Plntt Motn Reconsider 269

Section 21, Township 12 South, Range 44 East of the Boise Meridian



This Plat is provided as
an accommodation only and
does not constitute as actual
survey of the premises.

000065

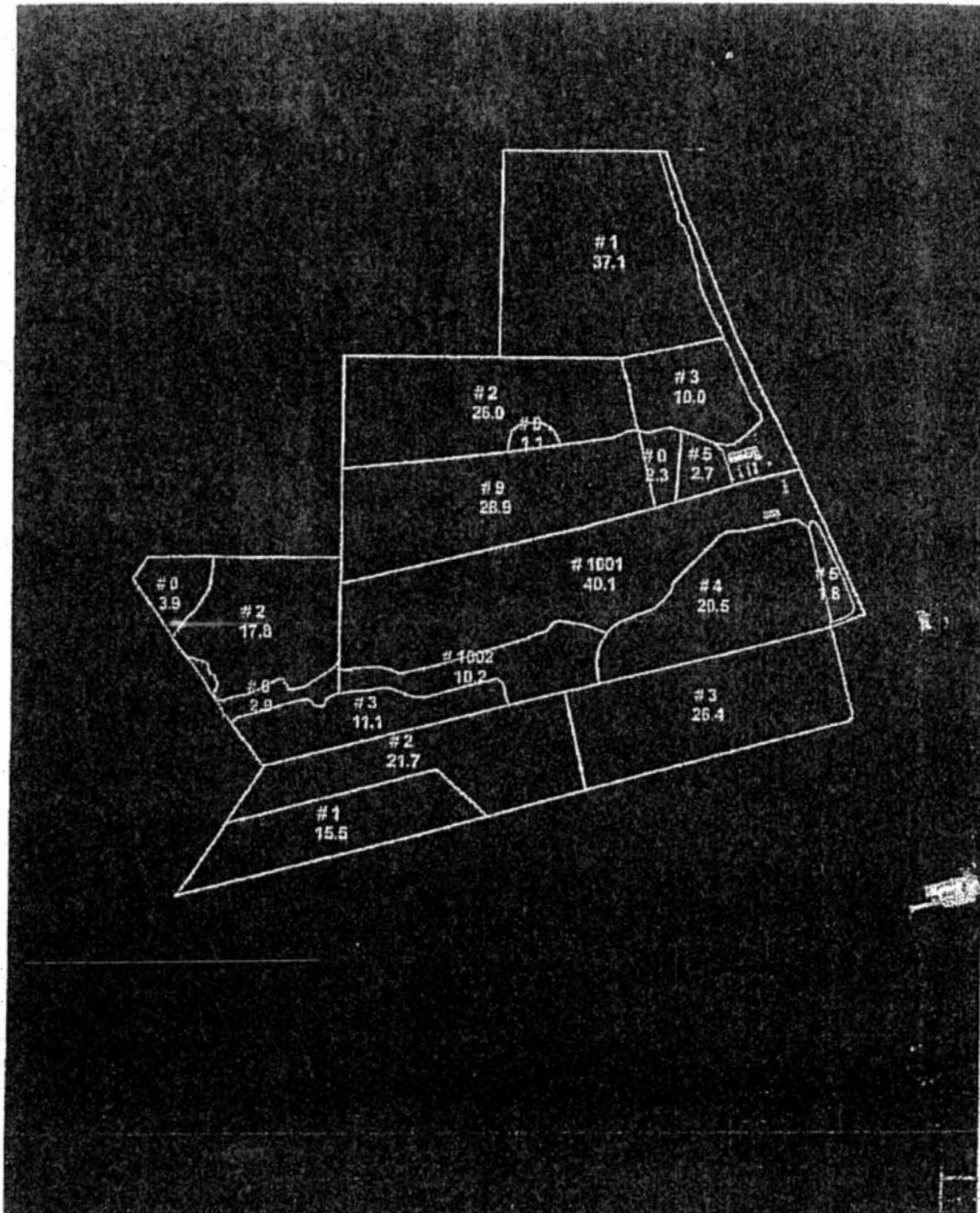
Aff'd Plntf Motn Reconsider

270

EXHIBIT "3"
TO AFFIDAVIT OF DOROTHY JULIAN

000066

Affd Plntf Motn Reconsider 271



USDA FARM SERVICE AGENCY
BEAR LAKE COUNTY FSA
FARM 1316, TRACT 846

1:9,772

Field Boundaries

March 22, 2007

0 400 800 1,600 2,400 3,200 Feet



000067

Affid Plaintiff Motn Reconsider 272

23

Plntf mptn Reconsider 273

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109
rcb@racinelaw.net

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X.)
)
Defendants.)
_____)

Case No. CV-09-183

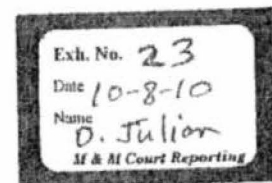
AFFIDAVIT OF LORI THORNOCK

STATE OF IDAHO)
 : ss.
County of Bear Lake)

LORI THORNOCK, being first duly sworn on oath, deposes and states as follows:

1. I am a United States citizen. I am over 21 years of age and competent to testify
regarding the facts and matters stated herein, which are based on my personal knowledge.

AFFIDAVIT OF LORI THORNOCK - Page 1



Affid Plntf Motn Reconsider 274

2. I am currently the Office Manager of Northern Title Company of Idaho ("Northern Title") located in Montpelier, Idaho. I am familiar with the office policies and procedures in place during 2007.

3. In 2007 I was the Escrow Officer/Manager at Northern Title, which handled a transaction whereby Steven Cummings purchased property from the Roger L. and Barbara L. Stephens Family Trust ("Stephens Family Trust").

4. I assisted in the closing of the transaction between Steven Cummings and the Stephens Family Trust that occurred on or about August 3, 2007.

5. On or about July 16, 2007, Evan Skinner of Exit Realty of Bear Lake informed Northern Title of a potential transaction between an undisclosed buyer and ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST and requested a title commitment covering the Stephens Family Trust property located West of Highway 30.

6. Based upon these instructions, Northern Title prepared the legal description used for the Commitment for Title Insurance intending it to cover the Stephens' property located West of Highway 30.

7. On or about July 31, 2007, Northern Title released the initial Commitment for Title Insurance referenced as Order No. NTBL-1183 ("Title Commitment") to Exit Realty. This Title Commitment was intended to cover only that portion of the Stephens' property lying West of Highway 30. However, the legal description contained in the initial Title Commitment failed to contain the necessary exclusionary language limiting the property to that lying West of Highway 30. The Title Commitment contained a plat map with arrows clearly indicating that the property involved

included only real property located West of Highway 30. A true and correct copy of the Title Commitment, as delivered to Exit Realty, is attached hereto as Exhibit "1" and incorporated herein by reference.

8. Within a day or two of delivering the initial Title Commitment to Exit Realty, Dorothy Julian contacted our office to confirm that the Title Commitment included only property located West of Highway 30. We then checked our file to verify that the described property included only property located West of Highway 30. In making this review it was discovered that the required exclusionary language was not included in the legal description of the property attached to the Title Commitment.

9. Shortly thereafter, we issued a revised Commitment for Title Insurance ("Second Title Commitment") inserting the exclusionary language after Parcel A, as listed. Again, this revised legal description was intended to describe only land on the West side of Highway 30. Unfortunately, the exclusionary language was misplaced and should have been located at the top of the entire legal description. However, the Second Title Commitment again contained a plat map with arrows all clearly indicating that the property involved included only real property located West of Highway 30. The plat map attached to the Second Title Commitment contains arrows identifying the property lying West of Highway 30. Upon information and belief, the Second Title Commitment was used for the closing of the transaction between Steven Cummings and the Stephens Family Trust. A true and correct copy of the Second Title Commitment is attached hereto as Exhibit "2".

10. We delivered the Second Title Commitment to Exit Realty, prior to the August 3 closing and confirmed with Dorothy Julian verbally that the legal description identified only the property located West of Highway 30.

11. Based on what I was told by both Evan Skinner and Dorothy Julian (the real estate agents involved), I was of the understanding and belief that they and Steven Cummings were all aware that the property being purchased by Mr. Cummings was only that located West of Highway 30.

12. During the closing of the transaction, Steven Cummings elected to courtesy close at his 1031 Exchange company located in Utah. A copy of the Second Title Commitment was included in the closing material sent by Northern Title to Steven Cummings's 1031 exchange company, acting as courtesy closer. In fact, one of the documents that I received back from Mr. Cummings side of the closing was the plat map attached hereto as Exhibit 3.

13. During the closing of the transaction, Steven Cummings signed a copy of Northern Title's Escrow General Provisions. A true and correct copy of the Escrow General Provisions is attached hereto as Exhibit "4" and incorporated herein by reference. Paragraph 11 of the Escrow General Provisions states that Steven Cummings "acknowledges receipt of a copy of, and an opportunity to review" a copy of the title commitment issued by Northern Title.

14. On August 3, 2007, Northern Title recorded a Warranty Deed as Instrument #199303 in the records of Bear Lake County, Idaho ("Original Warranty Deed"). The legal description attached to the Original Warranty Deed was the same Exhibit A attached to Exhibit 1, hereto. Again, when the legal description was prepared, it was intended to describe and I believed it described only

that portion of the Stephens' property lying West of Highway 30. A true and correct copy of the Original Warranty Deed, as recorded, is attached hereto as Exhibit "5".

15. On or about November 8, 2007, I was contacted by Roger Stephens, who indicated to me that he was told by the Bear Lake County Assessor's office that there was an error in the legal description on Exhibit A attached to the Original Warranty Deed, and that he should contact Northern Title to prepare and record a Correction Deed to correct the legal.

16. After speaking with Roger Stephens, I reviewed the documentation and platted the legal description involved in the transaction between Steven Cummings and the Stephens Family Trust and identified the error in the legal description on Exhibit A to the Original Warranty Deed. The error was made in the placement of the language "EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY 30" ("Exception Language"). The Exception Language had been placed on Exhibit A following the legal description for Parcel A, when the Exception Language should have been placed at the top of Exhibit A, thereby covering the legal descriptions for all parcels involved in the transaction.

17. At the time Roger Stephens contacted me on or about November 8, 2007, Northern Title was still in possession of the Original Warranty Deed. Northern Title had been holding the Original Warranty Deed since the August 3, 2007 closing pursuant to further verbal instructions from Steven Cummings, as to the proposed grantee. Mr. Cummings had asked that the property he was purchasing from the Stephens Family Trust be put into his "Trust" prior to issuing the owners policy. In order to comply with Mr. Cummings' request, Northern Title was required to have a copy of Mr. Cummings' Trust to ensure that the Warranty Deed was in compliance with the Trust instruction.

On November 8, 2007, I was still waiting for Steven Cummings to provide Northern Title with a copy of his Trust.

18. On or about November 8, 2007, after determining that scrivener's error had occurred in the legal description on Exhibit A to the Original Warranty Deed, I received authorization from Paul Davis, President of Northern Title, to correct and re-record the Warranty Deed. I also attempted to contact Steven Cummings via his cell phone, leaving several messages, but did not receive a response. Based upon the instructions given by the real estate agents, and the understanding of Northern Title that the transaction included only property on the west side of Highway 30, I corrected the legal error on the Original Warranty Deed by placing "x" marks through the Exception Language and by placing the following language at the top of Exhibit A: "***THE FOLLOWING PARCELS ARE CONVEYED EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF U.S. HIGHWAY 30***". These corrections to the Original Warranty Deed were made to reflect the understanding and original intent of Northern Title as to the property covered in the transaction.


19. On November 8, 2007, I re-recorded the corrected Warranty Deed as Instrument #199911 in the records of Bear Lake County, Idaho ("Correction Warranty Deed"). A true and correct copy of the Correction Warranty Deed is attached hereto as Exhibit "6" and incorporated herein by reference.

20. On April 9, 2008, Northern Title issued its Owners Policy of Title Insurance ("Title Policy") to Steven Cummings. The Title Policy contained a plat map with arrows clearly indicating that the property involved included only the real property located West of Highway 30. The plat map attached to the Title Policy was exactly the same as the plat map attached to the Title Commitment and the Second Title Commitment. A true and correct copy of the Title Policy is attached hereto as

Exhibit "7" and incorporated herein by reference. The Title Policy as issued to Steven Cummings includes only property located West of Highway 30, as identified on "Exhibit A" of the Title Policy.

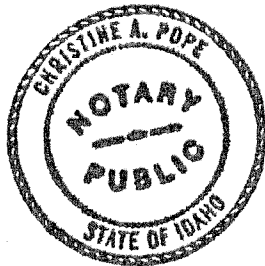
FURTHER SAITH AFFLIANT NAUGHT.

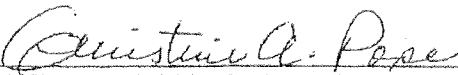
Dated this 17th day of September, 2010.


LORI THORNOCK

SUBSCRIBED AND SWORN TO before me this 17th day of September, 2010.

(SEAL)




NOTARY PUBLIC FOR IDAHO
Residing at: Bear Lake County
My Commission Expires: 01-26-2016

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 21 day of September, 2010, I served a true and complete copy of the foregoing document on the following persons in the manner indicated:

Nathan M. Olsen
Beard, St. Clair, Gaffney PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495

☒ U.S. Mail/Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Fax

Brad H. Bearnson
Bearnson & Peck, L.C.
399 North Main, Ste 300
Logan, Utah 84321

☒ U.S. Mail/Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Fax



RANDALL C. BUDGE

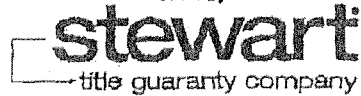
EXHIBIT "1"
TO AFFIDAVIT OF LORI THORNOCK

000076

Affid Plntf Motn Reconsider 282

ALTA Commitment (8/17/06)

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by

 Stewart
title guaranty company

Stewart Title Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.


Chairman of the Board

Stewart
title guaranty company




President

Countersigned:


Authorized Countersignature

Northern Title Co. of Idaho
Company Name

Preston, ID
City, State

004-UN ALTA Commitment (8/17/06)

File No.: NTBL-1183

000077

Affid Plntf Mtn Reconsider 283

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.atts.org/>.



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2028, Houston, Texas 77252.

Closing/Escrow inquiries to:
LORI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA BAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTEL-1183

1. Effective Date: May 30, 2007 @ 5:00 PM
2. Policy or policies to be issued:

A. ALTA Owner's (6/17/06)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount: \$800,000.00

Premium: \$2,130.00

B. ALTA Loan (6/17/06)

Coverage

Proposed Insured:

Amount: \$0.00

Premium: \$0.00

C. Endorsements: \$0.00

3. The estate or interest in the land described in the Commitment and covered herein is:
FEE SIMPLE
4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L.
STEPHENS FAMILY TRUST

5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is
described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS: BEAR LAKE COUNTY

"EXHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

SCHEDULE B - SECTION II

Order No. NTBL-1183

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.*
- (2) Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.*
- (3) Easements, claims of easement or encumbrances which are not shown by the public records.*
- (4) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.*
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.*
- (6) Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by public records.*

*Paragraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section II.

(See Special exceptions beginning on the next page)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS:

1. Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$183.54.
Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$1,134.00.
Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$135.10.
Tax Serial No. 3168
2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL EASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
5. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 30
RECORDED: MAY 22, 1956
INSTRUMENT NO.: 71884

RECORDED: AUGUST 1, 1956
INSTRUMENT NO.: 72172

RECORDED: SEPTEMBER 20, 1956
INSTRUMENT NO.: 72343

RECORDED: NOVEMBER 15, 1960
INSTRUMENT NO.: 79310

(Continued)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

7. An Easement for the purpose shown below and rights incidental thereto as set forth in a document

Granted to: UTAH POWER AND LIGHT COMPANY
Purpose: Public Utilities Easement
Dated: SEPTEMBER 5, 1957
Recorded: FEBRUARY 28, 1958
Entry No.: 74487 & 74488

8. RIGHT OF WAY OPTION

RECORDED: AUGUST 21, 1973
INSTRUMENT NO.: 101374

9. OIL AND GAS LEASE

RECORDED: FEBRUARY 11, 1976
INSTRUMENT NO.: 107445

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: JULY 9, 1976
INSTRUMENT NO.: 108991

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: JUNE 24, 1977
INSTRUMENT NO.: 112823

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED: JULY 18, 1977
INSTRUMENT NO.: 112668

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: DECEMBER 9, 1977
INSTRUMENT NO.: 113901

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: DECEMBER 28, 1977
INSTRUMENT NO.: 114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: AUGUST 13, 1980
INSTRUMENT NO.: 122412

(Continued)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124283

ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124284

10. RIGHT OF WAY EASEMENT

RECORDED: MAY 26, 1914
INSTRUMENT NO.: 10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

RECORDED: MARCH 7, 1997
INSTRUMENT NO.: 166238

NOTE: The policy of title insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC.
ROGER L. STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction fails to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

Barbara Baud
Examiner

NTBL-1183

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B-SECTION 1
REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

- (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to insured.
- (b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the issuance of any policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any items herein below.

In addition to the foregoing, the following requirements must be complied with, to-wit:

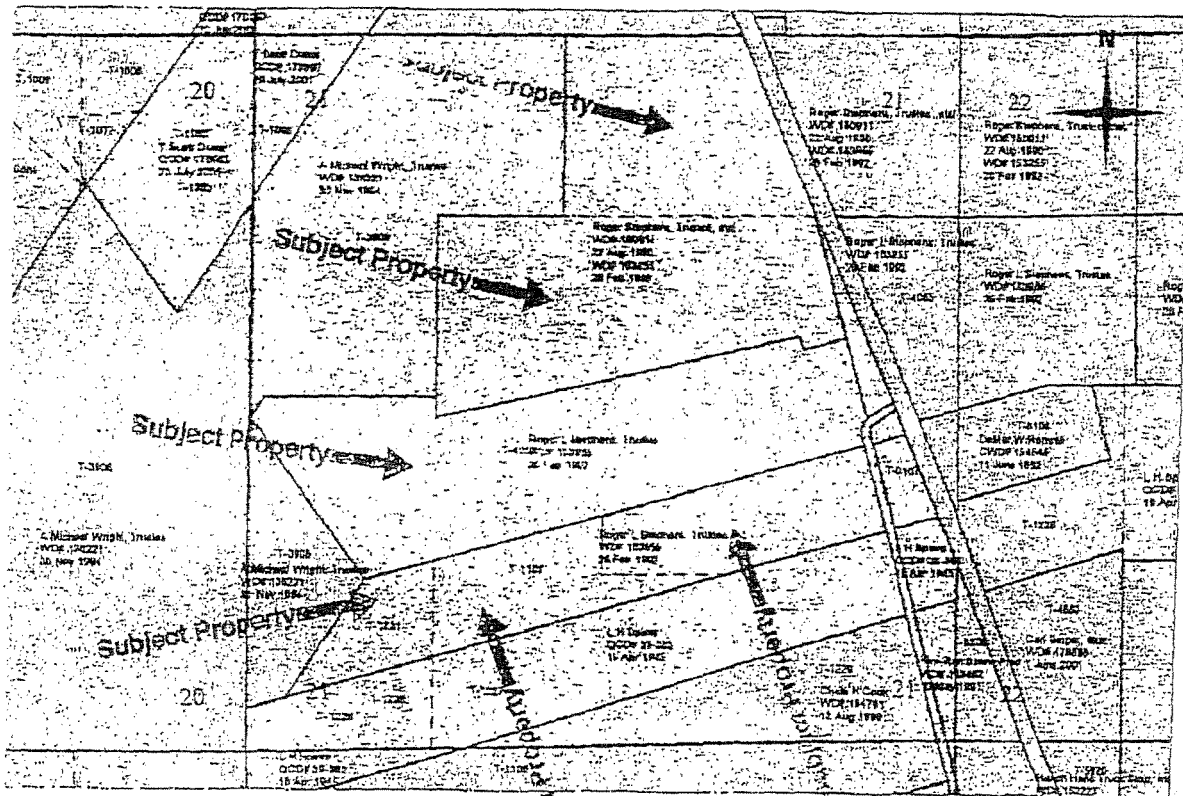
1. PURCHASE AND SALE AGREEMENT.
2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
5. THREE BAR RANCHES, INC. NEEDS TO RENEW ARTICLES OF INCORPORATION WITH THE STATE OF UTAH.

000085

Affd Plntf Motn Reconsider

291

Section 21, Township 12 South, Range 44 East of the Boise Meridian



This Plat is provided as
an accommodation only and
does not constitute as actual
survey of the premises.

EXHIBIT "2"
TO AFFIDAVIT OF LORI THORNOCK

000087

Affid Plntf Motn Reconsider

293

ALTA Commitment (6/17/06)

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by

stewart
title guaranty company

Stewart Title Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

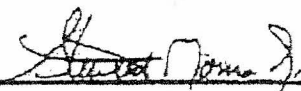
This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.


Chairman of the Board


the guaranty company




President

Countersigned:


Authorized Countersignature

Northam Title Co. of Idaho
Company Name

Preston, ID
City, State

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at < <http://www.altis.org/>.*



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

Closing/Escrow inquiries to:
LORI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA BAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTBL-1183

1. Effective Date: May 30, 2007 @ 5:00 PM

2. Policy or policies to be issued:

A. ALTA Owner's (6/17/06)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount: \$800,000.00

Premium: \$2,330.00

B. ALTA Loan (6/17/06)

Coverage

Proposed Insured:

Amount: \$0.00

Premium: \$0.00

C. Endorsements: \$0.00

3. The estate or interest in the land described in the Commitment and covered herein is:
FEE SIMPLE

4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L.
STEPHENS FAMILY TRUST

5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is
described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS: BEAR LAKE COUNTY

000090

Appd Plntf Motn Reconsider

296

"EXHIBIT A"

PARCEL A

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY 30.

PARCEL D

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

PARCEL E

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL F

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL I

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO,
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

000091

Affid Plntf Motn Reconsider

297

SCHEDULE B - SECTION II

Order No. NTBL-1183

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.*
- (2) Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.*
- (3) Easements, claims of easement or encumbrances which are not shown by the public records.*
- (4) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.*
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.*
- (6) Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by public records.*

*Paragraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section II.

(See Special exceptions beginning on the next page)

000092

Affid Plntf Motn Reconsider

298

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS:

1. Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$183.54
Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$1,134.00.
Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$135.10.
Tax Serial No. 3168
2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL EASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
5. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 30
RECORDED: MAY 22, 1956
INSTRUMENT NO.: 71884

RECORDED: AUGUST 1, 1956
INSTRUMENT NO.: 72172

RECORDED: SEPTEMBER 20, 1956
INSTRUMENT NO.: 72343

RECORDED: NOVEMBER 15, 1960
INSTRUMENT NO.: 79310

(Continued)

000093

Affid Plaintiff Motn Reconsider 299

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED.

7. An Easement for the purpose shown below and rights incidental thereto as set forth in a document

Granted to: UTAH POWER AND LIGHT COMPANY
Purpose: Public Utilities Easement
Dated: SEPTEMBER 5, 1957
Recorded: FEBRUARY 28, 1958
Entry No.: 74487 & 74488

8. RIGHT OF WAY OPTION

RECORDED: AUGUST 21, 1973
INSTRUMENT NO.: 101374

9. OIL AND GAS LEASE

RECORDED: FEBRUARY 11, 1976
INSTRUMENT NO.: 107445

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: JULY 9, 1976
INSTRUMENT NO.: 108991

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: JUNE 24, 1977
INSTRUMENT NO.: 112523

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED: JULY 18, 1977
INSTRUMENT NO.: 112668

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: DECEMBER 9, 1977
INSTRUMENT NO.: 113901

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: DECEMBER 28, 1977
INSTRUMENT NO.: 114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: AUGUST 13, 1980
INSTRUMENT NO.: 122412

(Continued)

000094

Affid Plntf Motn Reconsider

300

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124283

ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124284

10. RIGHT OF WAY EASEMENT

RECORDED: MAY 26, 1914
INSTRUMENT NO.: 10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

RECORDED: MARCH 7, 1997
INSTRUMENT NO.: 166238

NOTE: The policy of title insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

....

NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC.
ROGER L. STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction fails to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

Examiner

000095

Affid Plntf Mptn Reconsider

301

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B-SECTION 1 REQUIREMENTS

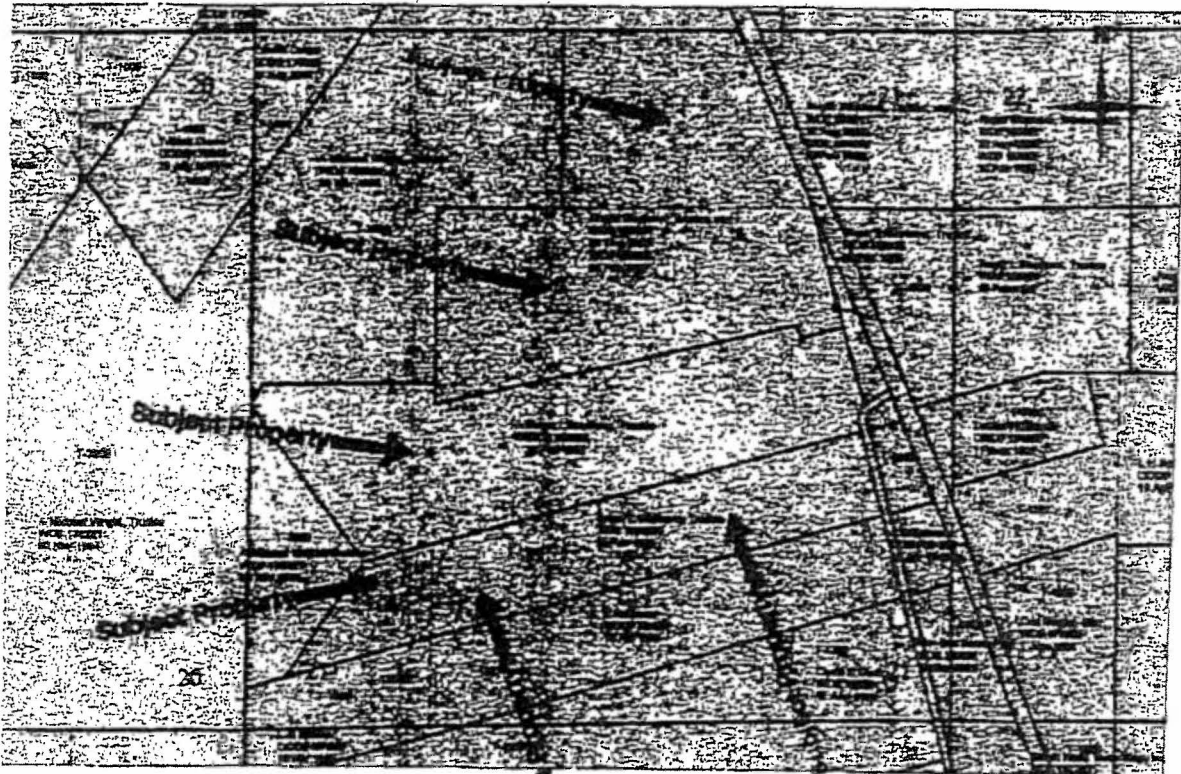
THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

- (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to insured.
- (b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the issuance of any policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any items herein below.

In addition to the foregoing, the following requirements must be complied with, to-wit:

1. PURCHASE AND SALE AGREEMENT.
2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
5. THREE BAR RANCHES, INC. NEEDS TO RENEW ARTICLES OF INCORPORATION WITH THE STATE OF UTAH.

Section 21, Township 12 South, Range 44 East of the Boise Meridian



This Plat is provided as
an accommodation only and
does not constitute an actual
survey of the premises.

000097

Affid Plaintiff Motion Reconsider

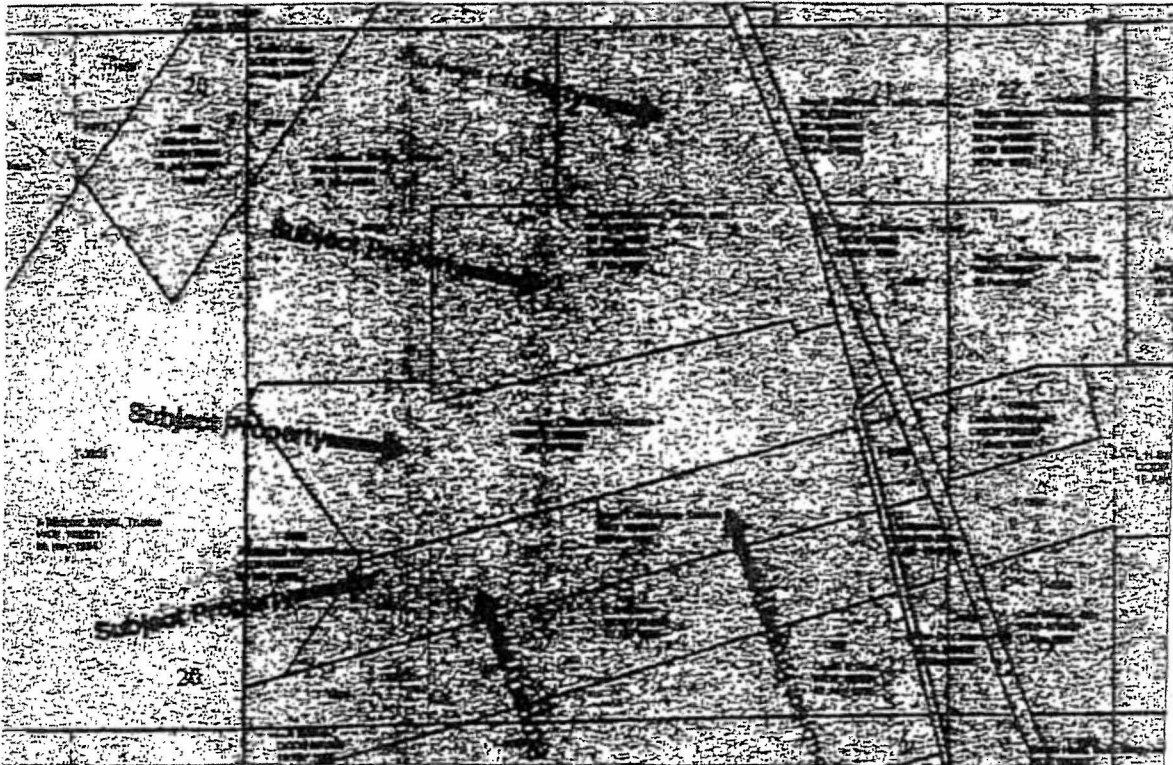
EXHIBIT "3"
TO AFFIDAVIT OF LORI THORNOCK

000098

Affid Plntf Motn Reconsider

304

Section 21, Township 12 South, Range 44 East of the Boise Meridian



This Plat is provided as
an accommodation only and
does not constitute an actual
survey of the premises.

000099

Affid Plntf Motn Reconsider

EXHIBIT "4"
TO AFFIDAVIT OF LORI THORNOCK

000100

Affd Plntf motn Reconsider 306

ESCROW GENERAL PROVISIONS

This agreement governs the duties and obligations between Northern Title Company of Idaho (hereinafter "Escrow Agent") and the undersigned signatories, who are parties to the following transaction.

Order No.: NTBL-1183

Address: MONTEPLIER, ID

Buyer(s): STEVEN B. CUMMINGS.

Seller(s): ROGER L. STEPHENS TRUSTEE and BARBARA L. STEPHENS TRUSTEE TRUST

The Parties understand and acknowledge:

1. Escrow Agents Role

Subject to the terms of this agreement, Escrow Agent agrees to act as an escrow agent in closing the transaction described above. Escrow Agent is not the agent of any single party. Rather, Escrow Agent agrees to prepare documents, secure the execution of documents, record documents, disburse funds, and otherwise close the transaction in the accordance with the joint directions of the parties. Escrow Agent has no other duties or obligations. In particular, Escrow Agent does not give and has no duty to give legal or other advice to the parties.

2. Parties' Role

The parties authorize Escrow Agent to close the transaction, record documents, disburse funds, and otherwise act in accordance with the written Settlement Statement and any written or oral directions or agreements given to Escrow Agent by the parties or their representatives. The parties agree that Escrow Agent is entitled to act on the direction of the realtor, attorney or other person who has dealt with Escrow Agent on behalf of them in this transaction. If any party wishes to limit the authority of those who have dealt on their behalf with Escrow Agent, any such limitation must be contained in a writing that is delivered to Escrow Agent. *The parties agree that they are not looking to Escrow Agent for legal or other advice, and that they had an opportunity to obtain such advice from persons other than those affiliated with Escrow Agent.*

3. Closing Documents

The parties have been given an opportunity to review all documents at closing and to seek independent advice or counsel concerning those documents, if desired. The parties agree that the only representations of Escrow Agent upon which they are entitled to rely or act are those that are in writing and executed by Escrow Agent and that the parties are not entitled to act or rely on conflicting oral or written terms or directions given to Escrow Agent prior to closing. The parties' execution and delivery of documents at closing shall, as between Escrow Agent and the parties, constitute the parties' agreements and directions to Escrow Agent whether or not Escrow Agent is a party to the documents. The terms of this paragraph shall not affect the parties' rights between themselves.

4. Deposit of Funds, Recording & Disbursements

The undersigned BUYER and SELLER hereby approve the foregoing statement and authorize NORTHERN TITLE COMPANY OF IDAHO to complete the transaction in accordance herewith. The instruments may be delivered or recorded and funds disbursed. Escrow Agent shall place all funds received in escrow into a federally insured depository account specifically designated as a trust account. Escrow Agent may maintain a general trust account and individual accounts for specific escrows, subject to any specific terms and conditions of any written agreement between Buyer, Seller, and Escrow Agent. Absent specific written direction from both Seller and Buyer, Escrow Agent shall, as agent for Buyer and Seller, determine the identity of the depository institution. Escrow Agent shall not be responsible for any loss of funds occurring as a result of failure of the institution in which funds have been deposited, so long as Escrow Agent complies with the foregoing provisions relating to the type of depository institutions and accounts to be used. Earnings on funds held in Escrow Agent's escrow trust account shall be owned by and periodically disbursed to Escrow Agent as additional consideration for services actually performed by Escrow Agent. Funds may be paid from trust accounts only in accordance with the terms and conditions of Buyer's and Seller's instructions to Escrow Agent. In the event that Escrow Agent initiates or is joined as a party to any litigation relating to this escrow, Buyer and Seller jointly and severally agree to pay all costs, expenses and attorney's fees incurred by Escrow Agent in such litigation. Escrow Agent shall be entitled, at its option, to be paid such costs, expenses and the attorney's fees from the funds deposited by the party(ies) with Escrow Agent.

5. Disclosure of Possible Benefits to Escrow Agent

As a result of Escrow Agent maintaining its general escrow accounts with the depositories, Escrow Agent may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from depositories ("collateral benefits"). All collateral benefits shall accrue to the sole benefit of Escrow Agent and Escrow Agent shall have obligation to account to the parties to this escrow for the value of any such collateral benefits.

6. Miscellaneous Fees

The Settlement Statement may prescribe that certain release or reconveyance fees are payable to Escrow Agent. These fees are payable to Escrow Agent to compensate it for facilitating and arranging for the reconveyance or release of the encumbrance in question and are payable in the amounts indicated irrespective of whether additional reconveyance fees or charges may have been paid or are payable to any other party and irrespective of any limitation on reconveyance or release fees that may be prescribed. Escrow Agent may incur certain additional costs on behalf of the parties for services performed by third party providers. The fees charged by Escrow Agent for such services may include a mark up over the direct cost of such services to reflect the averaging of direct, administrative and overhead charges of Escrow Agent for such services.

7. Prorations & Adjustments

The term "close of escrow" means the date on which documents are recorded. All pro-rations and/or adjustments shall be made as of the close of escrow based on a 30-day month, unless otherwise instructed in writing.

8. Contingency Periods

Escrow Agent shall not be responsible for monitoring contingency time periods between the parties. The parties shall execute such documents as may be requested by Escrow Agent to confirm the status of any such periods.

2

9. Reports

As an accommodation, Escrow Agent may agree to transmit orders for inspection, termite, disclosure and other reports if requested, in writing or orally, by the parties or their agents. Escrow Agent shall deliver copies of any such reports as directed. Escrow Agent is not responsible for reviewing such reports or advising the parties of the content of same.

10. Information from Affiliated Companies

Escrow Agent may provide the parties' information to and from its affiliates in connection with the offering of products and services from these affiliates.

11. Commitment for Title Insurance; Recordation of Documents

The undersigned Buyer hereby acknowledges receipt of a copy of, and an opportunity to review, Commitment for Title Insurance referenced as Order No. NTBL-1183 (the "Commitment") obtained through Escrow Agent in the contemplation of the above transaction, and authorizes the title insurer to issue the policy of title insurance contemplated thereby, which policy shall contain the following numbered exceptions from coverage 1-11; as shown on the Commitment in addition to any new encumbrances created in connection with this transaction. The undersigned Buyer and Seller affirm that the legal description appearing in the commitment is satisfactory, and authorize Escrow Agent to record documents delivered through escrow which contain said legal description(s) necessary or proper for the issuance of the requested title insurance policy(ies).

12. Personal Property Taxes

No examination, UCC search, insurance as to personal property and/or the payment of personal property taxes is required unless otherwise instructed in writing.

13. Real Property Taxes

The undersigned Buyer and Seller do hereby understand and agree that the proration for general property taxes as provided in the above referenced closing statements, was calculated by utilizing the general property taxes assessed for the year 2006. Accordingly, the Buyer(s) and Seller(s) do hereby hold Escrow Agent free and harmless from any liability or damages caused by an inaccurate proration for general property taxes assessed for the current year. Upon a determination of the assessed property taxes due for the current year, Buyer(s) and Seller(s) agree to make the proper proration adjustment as may required subsequent to closing.

14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/ chosen not to) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold **NORTHERN TITLE COMPANY OF IDAHO** and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: BENNINGTON IRRIGATION COMPANY Number of shares: 900
Company: MONTPELIER IRRIGATION COMPANY Number of shares: 100

• Buyer/Seller will transfer the water shares outside of closing and will not hold **NORTHERN TITLE COMPANY OF IDAHO** responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction. If no action is taken on this escrow within 6 months after the closing date specified in the escrow instructions, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

17. Conflicting Instructions & Disputes

If Escrow Agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file and action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

18. Usury

Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

19. Insurance Policies

In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.

21. Copies of Documents: Authorization to Release

Escrow Agent is authorized to rely upon copies of documents, which include facsimile, electronic, NCR, or photocopies as if they were an originally executed document. If requested by Escrow Agent, the originals of such documents shall be delivered to Escrow Agent. Escrow Agent may withhold documents and/or funds due to the party until such originals are delivered. Documents to be recorded MUST contain original signatures. Escrow Agent may furnish copies of any and all documents to the lender(s), real estate broker(s), attorney(s) and/or accountant(s) involved in this transaction upon their request.

22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. **WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES. ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.**

A. Taxpayer Identification Number Reporting

Federal law requires Escrow Agent to report Seller's social security number and/or tax identification number, forwarding address, and the gross sales price to the Internal Revenue Service ("IRS"). Escrow can not be closed nor any documents recorded until the information is provided and Seller certifies its accuracy to Escrow Holder.

B. Federal Withholding & Reporting

Certain federal reporting and withholding requirements exist for real estate transactions where the seller (transferor) is a non-resident alien, a non-domestic corporation or partnership controlled by non-residents or non-resident corporations or partnerships.

C. Taxpayer Identification Disclosure

Parties to a residential real estate transaction involving seller-provided financing are required to furnish, disclose, and include taxpayer identification numbers in their tax returns. Escrow Agent is not required to transmit the taxpayer I.D. numbers to the IRS of the parties. Escrow Agent is authorized to release any party's taxpayer I.D. numbers to any other party upon receipt of a written request. The parties waive all rights of confidentiality regarding their taxpayer I.D. numbers and agree to hold Escrow Agent harmless against any fees, costs, or judgments incurred and/or awarded because of the release of taxpayer I.D. numbers.

23. Privacy Policy

The undersigned Buyer and Seller hereby acknowledge receipt of a copy of the Privacy Policy of Northern Title Company and Escrow Agent.

24. Legal Counsel

The undersigned acknowledge that they have the right to seek legal counsel and tax advice in connection with this transaction. I/we the undersigned real estate salesperson/broker have reviewed the foregoing statement and certify that the above mentioned statement is accurate accounting of the transaction(s) between buyer and seller herein.

I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-1 Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.

Listing Agent/Broker

STEVEN E. CUSHINGS

ROGER L. STEPHENS TRUSTEE

Selling Agent/Broker

BARBARA L. STEPHENS TRUSTEE

"Escrow Agent":
NORTHERN TITLE COMPANY OF IDAHO

BY: Chad Thurnwald

EXHIBIT "5"
TO AFFIDAVIT OF LORI THORNOCK

Add Plntf Motn Reconsider

RECORDATION REQUESTED BY:

Instrument # 199039
BEAR LAKE COUNTY
2007-06-03 02:57:43 No. of Pages: 1
Recorded for: NORTHERN TITLE CO.
KERRY MADDOCK
Ex-Officio Recorder Deputy
Notary Public
Notary Seal: 9.08

WHEN RECORDED MAIL TO:
Steven B. Cummings
43 North 100 East
American Fork, Ut 84003

WARRANTY DEED

| Grantor | Grantee |
|---|--|
| Roger L. And Barbara L. Stephens Family Trust, Roger L. Stephens and Barbara L. Stephens, Trustees 436 Cobblestone Providence, Utah 84332 | Steven B. Cummings 43 North 100 East American Fork, Ut 84003 |

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the Grantor hereby sells and forever transfers the following parcels of real property to the Grantee, including the Grantor's right, title and interest therein:

SEE EXHIBIT "A" ATTACHED HERETO AND
INCORPORATED BY REFERENCE

TOGETHER WITH one hundred (100) shares of water stock in Montpelier Irrigation Company and nine hundred (900) shares of water stock in Beannington Irrigation Company.

TOGETHER WITH all pumps, motors, wheel lines, main line and other irrigation equipment.

TOGETHER WITH AND INCLUDING any and all fixtures and improvements, any and all appurtenances, tenements, and hereditaments, and any and all rents, issues, and profits that relate or otherwise pertain to the foregoing parcels of real property.

TO HAVE AND TO HOLD the foregoing parcels of real property unto the Grantee and its successors and assigns forever.

The Grantor hereby covenants that the Grantor is the owner in fee simple of the foregoing parcels of real property; that the foregoing parcels of real property are free and clear of any and all mortgages, liens, or other encumbrances of record in the records of Bear Lake County, Idaho, current taxes, ordinances and federal and state rights and reservations, including, without

WARRANTY DEED - 1

000106

Assd Plntf Motn Reconsider

312

199030

Idaho, current taxes, ordinances and federal and state rights and reservations, including, without limitation, patents, oil, gas and minerals, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, easements or claims of easement not shown by the public records, use restrictions and building and zoning regulations and ordinances of any governmental unit; and that the Grantors will warrant and defend the same from any and all lawful claims whatsoever.

IN WITNESS WHEREOF, the Grantors hereunto set their hands this 3rd day of August, 2007.

ROGER L. AND BARBARA L. STEPHENS
FAMILY TRUST

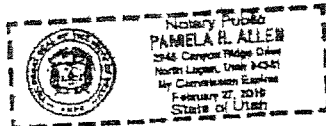
By: Roger L. Stephens, Trustee
ROGER L. STEPHENS

By: Barbara L. Stephens
BARBARA L. STEPHENS

STATE OF Utah)
County of Beaver) ss

On the 3rd day of August, 2007, before me, a Notary Public, personally appeared Roger L. Stephens and Barbara L. Stephens, Trustees of the Roger L. And Barbara L. Stephens Family Trust, known or identified to me to be the persons who executed the Warranty Deed, and duly acknowledged to me that they executed this Warranty Deed.

NOTARY PUBLIC FOR: Pamela H. Allen
Residing at: North Logan
My Commission Expires: 2/27/2010



WARRANTY DEED - 1

000107

Aff'd Plntf Motn Reconsider

199030

EXHIBIT A

PARCEL A
BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER
OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY,
IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.1 RODS; THENCE NORTH 80 RODS; THENCE
EAST 267.6 RODS; THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 17° EAST 252
FEET; THENCE SOUTH 73° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 73°
30' WEST 2784 FEET; THENCE NORTH 184 FEET TO THE PLACE OF BEGINNING.

EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY
30.

PARCEL D
COMMENCING AT A POINT 11.18 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST
QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE
COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 1.87 CHAINS; THENCE
SOUTH 71° WEST 44.83 CHAINS; THENCE NORTH 80° 45' WEST 13.68 CHAINS; THENCE NORTH 30° WEST
6.54 CHAINS; THENCE NORTH 73° EAST 62.50 CHAINS TO THE PLACE OF BEGINNING.

PARCEL E
BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER
OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY,
IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 71° 15' WEST 35.30 CHAINS; THENCE
NORTH 81.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL F
COMMENCING AT A POINT 25 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE
SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44
EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 86
RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 38 RODS, MORE OR LESS, TO 40 ACRE LINE;
THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE
SOUTHWESTERLY 112 RODS AND 8 LINES TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY
ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL I
BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER
OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY,
IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 178 FEET; THENCE SOUTH 35°
30' EAST 1494 FEET; THENCE NORTH 71° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S.
HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET;
THENCE SOUTH 73° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 73° 30'
WEST 2784 FEET; THENCE NORTH 184 FEET TO THE PLACE OF BEGINNING.
A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM
THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF
RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO,
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF
SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP
12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

*Roll
B.L.C.*

WARRANTY DEED - 3

000108

Affid Plntf Motn Reconsider

314

EXHIBIT "6"
TO AFFIDAVIT OF LORI THORNOCK

000109

Affid Plntf Motn Reconsider

315

RECORDATION REQUESTED BY:

Instrument # 199820
 BEAR LAKE COUNTY
 2007-05-03 02:37:53 No. of Pages: 3
 Recorded for: NORTHERN TITLE CO.
 KERRY MADDOCK
 Es-Office Recorder Deputy
 Exempt from RECORDATION FEE

WHEN RECORDED MAIL TO:

Steven B. Cummings
 43 North 100 East
 American Fork, UT 84003

Instrument # 199821
 BEAR LAKE COUNTY
 2007-05-03 02:38:54 No. of Pages: 3
 Recorded for: NORTHERN TITLE CO.
 KERRY MADDOCK
 Es-Office Recorder Deputy
 Exempt from RECORDATION FEE

RE-RECORDED TO CORRECT CLERK

WARRANTY DEED

| Grantor | Grantee |
|---|--|
| Roger L. And Barbara L. Stephens Family Trust, Roger L. Stephens and Barbara L. Stephens, Trustees 436 Cobblestone Providence, Utah 84302 | Steven B. Cummings 43 North 100 East American Fork, UT 84003 |

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the Grantor hereby sells and forever transfers the following parcels of real property to the Grantee, including the Grantor's right, title and interest therein:

SEE EXHIBIT "A" ATTACHED HERETO AND
 INCORPORATED BY REFERENCE

TOGETHER WITH one hundred (100) shares of water stock in Montpelier Irrigation Company and nine hundred (900) shares of water stock in Bennington Irrigation Company.

TOGETHER WITH all pumps, motors, wheel lines, main line and other irrigation equipment.

TOGETHER WITH AND INCLUDING any and all fixtures and improvements, any and all appurtenances, tenements, and hereditaments, and any and all rents, issues, and profits that relate or otherwise pertain to the foregoing parcels of real property.

TO HAVE AND TO HOLD the foregoing parcels of real property unto the Grantee and its successors and assigns forever.

The Grantor hereby covenants that the Grantor is the owner in fee simple of the foregoing parcels of real property; that the foregoing parcels of real property are free and clear of any and all mortgages, liens, or other encumbrances, ~~excepting~~ encumbrances of record in the records of Bear Lake County, Idaho, current taxes, ordinances and federal and state rights and reservations, including, without

WARRANTY DEED - 1

199911 199030

Ideals, current taxes, ordinances and federal and state rights and reservations, including, without limitation, patents, oil, gas and minerals, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, easements or claims of easement not shown by the public records, use restrictions and building and zoning regulations and ordinances of any governmental unit; and that the Grantors will warrant and defend the same from any and all lawful claims whatsoever.

IN WITNESS WHEREOF, the Grantors hereunto set their hands this 3rd day of August, 2007.

ROGER L. AND BARBARA L. STEPHENS
FAMILY TRUST

By: Roger L. Stephens, Trustee

ROGER L. STEPHENS

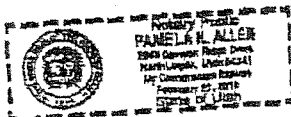
By: Barbara L. Stephens

BARBARA L. STEPHENS

STATE OF Utah)
County of Cache)

On the 3rd day of August, 2007, before me, a Notary Public, personally appeared Roger L. Stephens and Barbara L. Stephens, Trustees of the Roger L. And Barbara L. Stephens Family Trust, known or identified to me to be the persons who executed the Warranty Deed, and duly acknowledged to me that they executed this Warranty Deed.

NOTARY PUBLIC FOR: Pamela H. Allen
Residing at: North 2050
My Commission Expires: 2/27/2010



WARRANTY DEED - 1

000111

Affid Plnts Motn Reconsider

317

199911

199830

"THE FOLLOWING PARCELS ARE CONVEYED EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF U.S. HIGHWAY 30."

EXHIBIT A

PARCEL A

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 16.5 RODS; THENCE NORTH 40 RODS; THENCE EAST 297.5 RODS; THENCE SOUTH 20 RODS; THENCE WEST 2536 FEET; THENCE SOUTH 19' EAST 888 FEET; THENCE SOUTH 78' 30" WEST 316 FEET; THENCE NORTH 12' WEST 216 FEET; THENCE SOUTH 75' 30" WEST 2784 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

~~SECTION 21 OF TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.~~

PARCEL B

COMMENCING AT A POINT 11.18 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.80 CHAINS; THENCE SOUTH 15' 45" EAST 1.51 CHAINS; THENCE SOUTH 78' WEST 44.83 CHAINS; THENCE NORTH 89' 57" WEST 12.86 CHAINS; THENCE NORTH 30' WEST 1.54 CHAINS; THENCE NORTH 78' EAST 52.80 CHAINS TO THE PLACE OF BEGINNING.

PARCEL C

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 54.17 CHAINS; THENCE SOUTH 78' 15" WEST 38.30 CHAINS; THENCE NORTH 8.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL D

COMMENCING AT A POINT 25 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 68 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 38 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG 40 ACRE LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY (12 RODS AND 8 LINES) TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL E

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1200 FEET; THENCE SOUTH 54' WEST 175 FEET; THENCE SOUTH 38' 30" EAST 1484 FEET; THENCE NORTH 78' EAST 884 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 14' WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 78' 30" WEST 316 FEET; THENCE NORTH 12' WEST 216 FEET; THENCE SOUTH 75' 30" WEST 2784 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.
A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 25 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO,
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

*Rel
B.L.D.*

WARRANTY DEED - 3

EXHIBIT "7"
TO AFFIDAVIT OF LORI THORNOCK

000113

Affid Plntf Motn Reconsider

319

If you need to litigation about coverage or need assistance in another problem, please call our toll free number 1-800-726-1992. If you make a claim under your policy, you must provide written notice in accordance with terms of the Conditions. Visit our Website: www.stewarttitle.com

OWNER'S POLICY OF TITLE INSURANCE ISSUED BY



Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation, (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 1 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the insured be reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:
 - (a) A defect in the Title caused by:
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection.
 If a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without knowledge.

Countersigned:

Authorized Countersignature

Northern Title Co. of Idaho

Company Name

Preston, ID

City, State



[Signature]
Senior Chairman of the Board

[Signature]
Chairman of the Board

[Signature]
President

Policy
Serial No. O-9301-000074470

ALTA Owner's Policy (6-17-06)

Agency ID: 1200Z7

File Number NTBL-1163

000114

Affid Plnt & Mptn Reconsider

320

COVERED RISKS (Continued)

9. Title being vested other than as stated in Schedule A or being defective as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records.
- (b) to be timely, or
- (c) to amount to a purchase for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risk 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the cost, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning restrictions, regulating, prohibiting, or relating to:
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion (1a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion (1b) does not modify or limit the coverage provided under Covered Risk 5.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or spread to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records as of Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant, attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 5 and 10); or
 - (d) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A is:
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 5 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance". The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy". The date designated as "Date of Policy" in Schedule A.
- (c) "Entity". A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured". The Insured named in Schedule A.
 - (i) The term "Insured" also includes:
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchases, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title:
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured;
 - (2) if the grantee wholly owns the named Insured;
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity; or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the

Insured named in Schedule A for estate planning purposes.

- (d) With regard to (A), (B), (C), and (D) meaning, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant". An insured claiming loss or damage.
- (f) "Knowledge" or "Known". Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impact constructive notice of matters affecting the Title.
- (g) "Land". The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in, egress, egress, road, easement, at any, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage". Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records". Records established under state statute as of Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection laws filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title". The estate or interest described in Schedule A.
- (k) "Unmarketable Title". Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not

continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

-stewart
— THE FARMERS GROUP —

CONDITIONS (Continued)

1. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case knowledge shall come to an insured hereunder of any claim of Title or interest that is adverse to the Title as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Uninsurable Title. If the Company is provided by the failure of the insured Claimant to provide prompt notice, the Company's liability to the insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment from the insured Claimant a signed proof of loss. The proof of loss must describe the defect, loss, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim covered by this policy adverse to the insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel at its option (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the insured shall secure to the Company the right to do prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the insured for the purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If

(b) the Company is prohibited by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under this policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(c) The Company may reasonably require the insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as

may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under the policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the insured Claimant that were authorized by the Company up to the time of payment or tender of payment, and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(c) To pay or otherwise settle with other parties for or in the name of an insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(d) To pay or otherwise settle with the insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (b), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or
(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and the insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was

-stewart
the security company

CONDITIONS (Continued)

- (8) made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.
- 8. LIMITATION OF LIABILITY**
- (a) If the Company establishes the Title or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, as so insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeal, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.
- 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**
- All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.
- 11. LIABILITY NONCUMULATIVE**
- The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or in which the insured has agreed, assumed, or taken subject, or which is warranted by an insured after Date of Policy, and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the insured under this policy.
- 12. PAYMENT OF LOSS**
- When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.
- 13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**
- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in this Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) The Company's right of subrogation includes the rights of the insured to indemnities, guarantees, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.
- 14. ARBITRATION**
- Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joining or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules shall be pending upon the period. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.
- 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**
- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment or endorsement to this policy must be in writing and substantiated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.
- 16. SEVERABILITY**
- In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision of such part held to be invalid, but all other provisions shall remain in full force and effect.
- 17. CHOICE OF LAW; FORUM**
- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore is reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of the insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.
- 18. NOTICES, WHERE SENT**
- Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Claims Department at P.O. Box 2028, Houston, TX 77252-2028.

stewart
—title insurance company

000117

Affid Plntf Motn Reconsider

323

ALTA Owners Policy (6-17-05)

SCHEDULE A

Name and Address of Title Insurance Company:

NORTHERN TITLE COMPANY OF IDAHO
96 SOUTH STATE STREET
PRESTON, IDAHO 83263

File No.: NTBL-1183

Policy No.: O-9301-000674470

Address Reference: BEAR LAKE COUNTY, ID

Amount of Insurance: \$850,000.00

Premium: \$2,443.00

Date of Policy: August 3, 2007 at 2:57 PM

1. Name Of Insured:

STEVEN B. CUMMINGS

2. The estate or interest in the land which is covered by this Policy is:

FEE SIMPLE

3. Title to the estate or interest in the land is vested in:

STEVEN B. CUMMINGS

4. The land referred to in this Policy is described as follows:

See Attached Exhibit "A"

This Policy valid only if Schedule B is attached

000118

Aff'd Plntf Motn Reconsider 324

"EXHIBIT A"

THE FOLLOWING PARCELS ARE CONVEYED EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF U.S. HIGHWAY 30.

PARCEL A

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS; THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

PARCEL D

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

PARCEL E

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL F

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL I

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 688 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO,
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

SCHEDULE B

File No.: NTBL-1183

Policy Number: O-9301-000674470

Exceptions From Coverage

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
- (2) Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
- (3) Easements, claims of easement or encumbrances which are not shown by the public records.
- (4) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
- (6) Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by public records.

SCHEDULE B
(CONTINUED)

File No.: NTBL-1183

Policy Number: O-9301-000074470

1. Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$183.54.
Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$1,134.00.
Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$115.10.
Tax Serial No. 3168

2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL EASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
5. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 30
RECORDED: MAY 22, 1956
INSTRUMENT NO.: 71884

RECORDED: AUGUST 1, 1956
INSTRUMENT NO.: 72172

RECORDED: SEPTEMBER 20, 1956
INSTRUMENT NO.: 72343

RECORDED: NOVEMBER 15, 1960
INSTRUMENT NO.: 79310

(Continued)

(Continued)

File No.: NTBL-1183

Policy Number: O-9301-000074470

7. An Easement for the purpose shown below and rights incidental thereto as set forth in a document:

Granted to: UTAH POWER AND LIGHT COMPANY
Purpose: Public Utilities Easement
Dated: SEPTEMBER 5, 1957
Recorded: FEBRUARY 28, 1958
Entry No.: 74487 & 74488

8. RIGHT OF WAY OPTION

RECORDED: AUGUST 21, 1973
INSTRUMENT NO.: 101374

9. OIL AND GAS LEASE

RECORDED: FEBRUARY 11, 1976
INSTRUMENT NO.: 107445

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: JULY 9, 1976
INSTRUMENT NO.: 108991

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: JUNE 24, 1977
INSTRUMENT NO.: 112523

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED: JULY 18, 1977
INSTRUMENT NO.: 112668

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: DECEMBER 9, 1977
INSTRUMENT NO.: 113901

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: DECEMBER 28, 1977
INSTRUMENT NO.: 114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: AUGUST 13, 1980
INSTRUMENT NO.: 122412

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124283

ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124284

(Continued)

000122

Affid Plntf Motn Reconsider

328

(Continued)

File No.: NTEL-1123

Policy Number: O-9301-000674470

10. RIGHT OF WAY EASEMENT

RECORDED: MAY 26, 1914

INSTRUMENT NO.: 10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

RECORDED: MARCH 7, 1997

INSTRUMENT NO.: 166238

000123

Aff'd Plntf Mtn Reconsider

329

This is a detailed plat map of a section of land, likely in the 1800s, showing various land parcels, owners, and survey dates. The map includes a compass rose in the top right corner. Several parcels are labeled 'Subject Property' with arrows pointing to them. The map is divided into sections, with some sections numbered 20, 21, and 22. The map shows a network of roads and boundaries, with some areas marked as 'Unsurveyed Property'.

Section 20:

- Parcel 1: 1-1008, 1-1009, 1-1010, 1-1011, 1-1012, 1-1013, 1-1014, 1-1015, 1-1016, 1-1017, 1-1018, 1-1019, 1-1020, 1-1021, 1-1022, 1-1023, 1-1024, 1-1025, 1-1026, 1-1027, 1-1028, 1-1029, 1-1030, 1-1031, 1-1032, 1-1033, 1-1034, 1-1035, 1-1036, 1-1037, 1-1038, 1-1039, 1-1040, 1-1041, 1-1042, 1-1043, 1-1044, 1-1045, 1-1046, 1-1047, 1-1048, 1-1049, 1-1050, 1-1051, 1-1052, 1-1053, 1-1054, 1-1055, 1-1056, 1-1057, 1-1058, 1-1059, 1-1060, 1-1061, 1-1062, 1-1063, 1-1064, 1-1065, 1-1066, 1-1067, 1-1068, 1-1069, 1-1070, 1-1071, 1-1072, 1-1073, 1-1074, 1-1075, 1-1076, 1-1077, 1-1078, 1-1079, 1-1080, 1-1081, 1-1082, 1-1083, 1-1084, 1-1085, 1-1086, 1-1087, 1-1088, 1-1089, 1-1090, 1-1091, 1-1092, 1-1093, 1-1094, 1-1095, 1-1096, 1-1097, 1-1098, 1-1099, 1-1100, 1-1101, 1-1102, 1-1103, 1-1104, 1-1105, 1-1106, 1-1107, 1-1108, 1-1109, 1-1110, 1-1111, 1-1112, 1-1113, 1-1114, 1-1115, 1-1116, 1-1117, 1-1118, 1-1119, 1-1120, 1-1121, 1-1122, 1-1123, 1-1124, 1-1125, 1-1126, 1-1127, 1-1128, 1-1129, 1-1130, 1-1131, 1-1132, 1-1133, 1-1134, 1-1135, 1-1136, 1-1137, 1-1138, 1-1139, 1-1140, 1-1141, 1-1142, 1-1143, 1-1144, 1-1145, 1-1146, 1-1147, 1-1148, 1-1149, 1-1150, 1-1151, 1-1152, 1-1153, 1-1154, 1-1155, 1-1156, 1-1157, 1-1158, 1-1159, 1-1160, 1-1161, 1-1162, 1-1163, 1-1164, 1-1165, 1-1166, 1-1167, 1-1168, 1-1169, 1-1170, 1-1171, 1-1172, 1-1173, 1-1174, 1-1175, 1-1176, 1-1177, 1-1178, 1-1179, 1-1180, 1-1181, 1-1182, 1-1183, 1-1184, 1-1185, 1-1186, 1-1187, 1-1188, 1-1189, 1-1190, 1-1191, 1-1192, 1-1193, 1-1194, 1-1195, 1-1196, 1-1197, 1-1198, 1-1199, 1-1200, 1-1201, 1-1202, 1-1203, 1-1204, 1-1205, 1-1206, 1-1207, 1-1208, 1-1209, 1-1210, 1-1211, 1-1212, 1-1213, 1-1214, 1-1215, 1-1216, 1-1217, 1-1218, 1-1219, 1-1220, 1-1221, 1-1222, 1-1223, 1-1224, 1-1225, 1-1226, 1-1227, 1-1228, 1-1229, 1-1230, 1-1231, 1-1232, 1-1233, 1-1234, 1-1235, 1-1236, 1-1237, 1-1238, 1-1239, 1-1240, 1-1241, 1-1242, 1-1243, 1-1244, 1-1245, 1-1246, 1-1247, 1-1248, 1-1249, 1-1250, 1-1251, 1-1252, 1-1253, 1-1254, 1-1255, 1-1256, 1-1257, 1-1258, 1-1259, 1-1260, 1-1261, 1-1262, 1-1263, 1-1264, 1-1265, 1-1266, 1-1267, 1-1268, 1-1269, 1-1270, 1-1271, 1-1272, 1-1273, 1-1274, 1-1275, 1-1276, 1-1277, 1-1278, 1-1279, 1-1280, 1-1281, 1-1282, 1-1283, 1-1284, 1-1285, 1-1286, 1-1287, 1-1288, 1-1289, 1-1290, 1-1291, 1-1292, 1-1293, 1-1294, 1-1295, 1-1296, 1-1297, 1-1298, 1-1299, 1-1300, 1-1301, 1-1302, 1-1303, 1-1304, 1-1305, 1-1306, 1-1307, 1-1308, 1-1309, 1-1310, 1-1311, 1-1312, 1-1313, 1-1314, 1-1315, 1-1316, 1-1317, 1-1318, 1-1319, 1-1320, 1-1321, 1-1322, 1-1323, 1-1324, 1-1325, 1-1326, 1-1327, 1-1328, 1-1329, 1-1330, 1-1331, 1-1332, 1-1333, 1-1334, 1-1335, 1-1336, 1-1337, 1-1338, 1-1339, 1-1340, 1-1341, 1-1342, 1-1343, 1-1344, 1-1345, 1-1346, 1-1347, 1-1348, 1-1349, 1-1350, 1-1351, 1-1352, 1-1353, 1-1354, 1-1355, 1-1356, 1-1357, 1-1358, 1-1359, 1-1360, 1-1361, 1-1362, 1-1363, 1-1364, 1-1365, 1-1366, 1-1367, 1-1368, 1-1369, 1-1370, 1-1371, 1-1372, 1-1373, 1-1374, 1-1375, 1-1376, 1-1377, 1-1378, 1-1379, 1-1380, 1-1381, 1-1382, 1-1383, 1-1384, 1-1385, 1-1386, 1-1387, 1-1388, 1-1389, 1-1390, 1-1391, 1-1392, 1-1393, 1-1394, 1-1395, 1-1396, 1-1397, 1-1398, 1-1399, 1-1400, 1-1401, 1-1402, 1-1403, 1-1404, 1-1405, 1-1406, 1-1407, 1-1408, 1-1409, 1-1410, 1-1411, 1-1412, 1-1413, 1-1414, 1-1415, 1-1416, 1-1417, 1-1418, 1-1419, 1-1420, 1-1421, 1-1422, 1-1423, 1-1424, 1-1425, 1-1426, 1-1427, 1-1428, 1-1429, 1-1430, 1-1431, 1-1432, 1-1433, 1-1434, 1-1435, 1-1436, 1-1437, 1-1438, 1-1439, 1-1440, 1-1441, 1-1442, 1-1443, 1-1444, 1-1445, 1-1446, 1-1447, 1-1448, 1-1449, 1-1450, 1-1451, 1-1452, 1-1453, 1-1454, 1-1455, 1-1456, 1-1457, 1-1458, 1-1459, 1-1460, 1-1461, 1-1462, 1-1463, 1-1464, 1-1465, 1-1466, 1-1467, 1-1468, 1-1469, 1-1470, 1-1471, 1-1472, 1-1473, 1-1474, 1-1475, 1-1476, 1-1477, 1-1478, 1-1479, 1-1480, 1-1481, 1-1482, 1-1483, 1-1484, 1-1485, 1-1486, 1-1487, 1-1488, 1-1489,

This Plat is provided as an accommodation only and does not constitute an actual survey of the premises.

#24

Attd Plntf Motn Reconsider

331

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109
rob@racinelaw.net

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X.)

Defendants.)

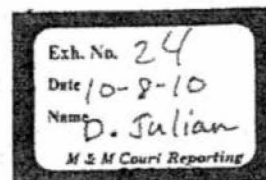
Case No. CV-09-183

AFFIDAVIT OF EVAN SKINNER

STATE OF IDAHO)
: ss.)
County of Bear Lake)

EVAN SKINNER, being first duly sworn on oath, deposes and states as follows:

1. I am a United States citizen. I am over 21 years of age and competent to testify
regarding the facts and matters stated herein, which are based on my personal knowledge.



Affid. Plntff. Mptn Reconsider

2. I am currently a real estate agent with RE/MAX in Montpelier, Idaho. As a real estate agent, I hold myself out to the public as an "Idaho-Utah-Wyoming Farm and Ranch Specialist".

3. I have sold ranches in the Bear Lake Valley for 14 years and am very familiar with the various ranches located in the Bear Lake Valley. I am not guessing when I tell clients information about boundaries.

4. In July of 2007 I was working as a real estate agent for Exit Realty of Bear Lake.

5. In July of 2007 I was asked by Dorothy Julian-Ralls, then a real estate agent for Exit Realty of Bear Lake, to help her show Steven Cummings some properties in Montpelier, Idaho and the surrounding areas.

6. At approximately the end of July 2007 I showed Steven Cummings several properties in Montpelier and the surrounding areas. Steven Cummings drove his motor home and followed my vehicle as we viewed each property.

7. One of the properties I showed Steven Cummings was the Roger Stephens ranch property on the west side of Highway 30 located north of Montpelier ("Stephens Property"). To get to the Stephens Property I drove on North 8th Street, which is west of Highway 30. I showed Mr. Cummings where the Stephens Property started from North 8th Street and we then went to the main residence located on the Stephens Property.

8. While at the Stephens Property I explained to Steven Cummings that the Stephens Property was under contract, but that the buyer, Three Bar Ranches, Inc. ("Three Bar Ranches") may be willing to sell its position if it could make more than what it was going to have to pay for the Stephens Property. I also told Steven Cummings that the Stephens Property was approximately 270

acres, but that the acreage I told him was only an estimate and we received our information from the Bear Lake County records. I also explained to Steven Cummings that the Stephens Property had not been surveyed, and that the Stephens Property had been part of a larger tract of land but that the property located on the east side of Highway 30 was not part of the sale.

9. I explained to Steven Cummings that if he decided to purchase the Stephens Property we would need to have Three Bar Ranches assign its interest over to Steven Cummings as the second buyer.

10. After I showed Steven Cummings the Stephens Property, I spoke to Curtis Baum, a representative of Three Bar Ranches, and he agreed to sell Three Bar Ranches' interest in the purchase of the Stephens Property for a profit of approximately \$50,000.00.

11. I gave Steven Cummings a copy of the Purchase and Sale Agreement that was entered into between Three Bar Ranches and Roger and Barbara Stephens.

12. I told Steven Cummings several times prior to his purchase of the Stephens Property that the portion of the Stephens Property for sale was only the land on the west side of Highway 30.

13. I personally showed Steven Cummings both in person and on a map that the Stephens Property that was for sale consisted of approximately 270 acres and was only the land on the west side of Highway 30.

14. I, on behalf of Exit Realty of Bear Lake, provided Steven Cummings with a Buyer Due Diligence Checklist, which Steven Cummings initialed and signed on July 26, 2007. A true and correct copy of the Buyer Due Diligence Checklist is attached hereto as Exhibit "1", incorporated herein by reference as if set forth fully.

15. The Buyer Due Diligence Checklist signed by Steven Cummings specifically states that "[i]f the square footage or acreage of the Property is of material concern to buyer, buyer is advised to verify the square footage or acreage through any independent sources or means deemed appropriate by Buyer. . . . Buyer is advised not to rely on seller, the Company, or any agents of the Company for a determination regarding the square footage or acreage of the Property." Ex. "1", section 9.

16. It is my opinion that Steven Cummings's purchase of the approximately 270 acres of the Stephens Property was an excellent buy. In fact, I still had people looking to purchase property at the price Steven Cummings paid for the Stephens Property over a year after Steven Cummings's purchase of the Stephens Property, even when the real estate market in the Bear Lake Valley had become substantially depressed as a result of the recent downturn in the economy.

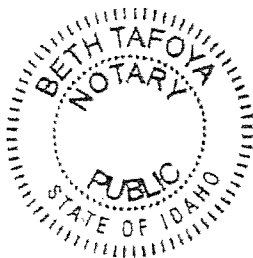
FURTHER SAITH AFFIANT NAUGHT.

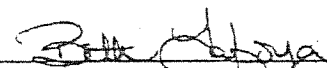
Dated this 23 day of February ~~20~~, 2010.


EVAN SKINNER

SUBSCRIBED AND SWORN TO before me this 23 day of February, 2010.

(SEAL)




NOTARY PUBLIC FOR IDAHO
Residing at: Montpelier, ID.
My Commission Expires: 10-31-2012

AFFIDAVIT OF EVAN SKINNER - Page 4

000128

Assd Plntff Motn Reconsider

335

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of September, 2010, I served a true and complete copy of the foregoing document on the following persons in the manner indicated:

Nathan M. Olsen
Beard, St. Clair, Gaffney PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495

☒ U.S. Mail/Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Fax

Brad H. Beamson
Beamson & Peck, L.C.
399 North Main, Ste 300
Logan, Utah 84321

☒ U.S. Mail/Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Fax



RANDALL C. BUDGE

EXHIBIT "1"
TO AFFIDAVIT OF EVAN SKINNER

000130

Affid Plntf Motn Reconsider 337



BUYER DUE DILIGENCE CHECKLIST

This is a legally binding document. If not understood, consult an attorney.

This Buyer Due Diligence Checklist is provided by Exit Realty of Bear Lake (the "Company") including Edna Skinner (the "Agent") to Stephen Cummings (the "Buyer") in connection with the purchase of any property including (if known) the property located at Stephen's Ranch A. of Montpelier the "Property".

NOTICE FROM COMPANY

Buyer is advised that the Company and its agents are trained in the marketing of real estate. Neither the Company nor its agents are trained or licensed to provide Buyer with professional advice regarding the physical condition of any property or regarding legal or tax matters. The Company and its agents strongly recommend that in connection with any offer to acquire any property, Buyer retain the professional services of legal and/or tax advisors, property inspectors, surveyors, and other professionals to satisfy Buyer as to any and all aspects of the physical and legal condition of the property. BUYER IS ADVISED NOT TO RELY ON THE COMPANY, OR ON ANY AGENTS OF THE COMPANY, FOR A DETERMINATION REGARDING THE PHYSICAL OR LEGAL CONDITION OF THE PROPERTY. The following is a general listing of issues that Buyer should consider in evaluating any property. This is not intended to be a comprehensive list of all issues that may be relevant to Buyer's evaluation of a specific property, including any property listed above. This document is, however, intended to direct Buyer's attention to a number of issues that are commonly considered important in the evaluation of any property.

1. **BUILDING CODE/ZONING COMPLIANCE:** Buyer is advised to consult with local zoning officials to assure the Buyer's intended use of the Property (including, but not limited to, retail and business uses, construction of new improvements and/or the removal of existing improvements) will comply with local zoning requirements and with any recorded restrictive covenants and conditions. Buyer should determine whether a certificate of occupancy has been issued for the Property and if such certificate is available for inspection. Buyer is also advised to make inquiry at the local building department to determine if building permits and final inspections were obtained for any remedial work at the Property, if applicable. Buyer acknowledges that the Company should not be relied upon for any determination as to any past, present or future building code or zoning restrictions or violations, or as to the suitability of the Property for Buyer's intended use.
2. **HAZARDOUS WASTE AND TOXIC SUBSTANCES:** Buyer is advised to consult with appropriate professionals regarding the possible existence of hazardous wastes and toxic substances on the Property, including, but not limited to, asbestos, radon gas, lead and lead-based paint. Buyer is advised that a variety of federal laws can place strict liability on property owners for hazardous waste management and cleanup of hazardous substances. Buyer is advised of Buyer's obligation to make appropriate inquiries ("due diligence") into past uses of the Property to ascertain the possible existence of hazardous wastes or toxic substances. Buyer acknowledges that the Company should not be relied upon for any determination as to the existence of any hazardous wastes or toxic substances.
3. **SURVEYING AND STAKING:** Buyer is advised that without an accurate survey of the Property, Buyer cannot be certain as to the boundaries of the Property, or that any improvements on the Property are not encroaching upon adjoining parcels of property, or that improvements located on adjoining parcels of property do not encroach onto the Property. Walls and fences may not correspond with legal boundary lines for the Property. Buyer acknowledges that the Company should not be relied upon for any determination as to the boundaries of the Property or of any encroachments within or over the actual boundaries of the Property.
4. **HOME WARRANTY PLAN:** Buyer acknowledges that Buyer has been advised by the Company of the availability of Home Warranty Plans which provide limited warranties for certain home appliances and certain components of the Property after Closing.
5. **FLOOD ZONE AND INSURANCE:** If the Property is located in a "Flood Zone" as set forth on the F.U.D. "Special Flood Hazard Area" map, the mortgage lender may require that Buyer obtain and pay for flood insurance on the Property and its improvements.
6. **HOMEOWNERS INSURANCE:** Buyer is advised that certain properties, due to location, condition, and/or claims history, may be uninsurable, or may only be insurable at an increased cost. Buyer is also advised that Buyer's credit, insurance claims

X Initial [Signature]
X Date 7-26-07

history, and other issues (such as specific kinds of pests), may be factors in determining the availability and cost of homeowner insurance. Buyer is advised to consult directly with insurance companies or Buyer's choice regarding the availability and cost of homeowner insurance for the Property.

2. TITLE ISSUES/HOMEBOWNER'S ASSOCIATION: Buyer is advised that title insurance companies offer a variety of title insurance policies that provide different levels of coverage. Buyer is advised to carefully review with legal counsel and with the title insurer: (a) the available title insurance coverage; (b) the contents of any Commitment for Title Insurance on the Property; and (c) the contents of all documents affecting the Property that are a matter of public record, including, but not limited to, any restrictive covenants (CC&R's). If the Property is part of a Condominium or other Homeowners Association ("HOA"), Buyer is advised to consult directly with the HOA regarding all HOA matters that may affect the Property, including, but not limited to, existing and proposed budgets, financial statements, present and proposed assessments, dues, fees, reserve account, rules, and meeting minutes.

A. PHYSICAL CONDITION: Buyer is advised to consult with appropriate professionals regarding all physical aspects of the Property, including, but not limited to: built-in appliances; plumbing fixtures, lines, fittings and systems; heating, air conditioning systems and components; electrical wiring, systems, appliances and components; foundation; roof; structure; exterior surfaces (including stucco); exterior features and equipment; pool/spa systems and components; any diseased trees or other landscaping; past use of the Property for storage or manufacturing of any illegal substances including, methamphetamine, and moisture seepage and damage from roof, foundation or windows. Buyer is advised not to rely on seller, the Company, or any agents of the Company for a determination regarding the physical condition of the Property.

4. SQUARE FOOTAGE/ACREAGE: If the square footage or acreage of the Property is of material concern to Buyer, Buyer is advised to verify the square footage or acreage through any independent sources or means deemed appropriate by Buyer. In the event the Company provides any numerical statements regarding these items, such statements are approximations only. Buyer is advised not to rely on seller, the Company, or any agents of the Company for a determination regarding the square footage or acreage of the Property.

10. UTILITY SERVICES: Buyer is advised to consult with appropriate professionals regarding the location of utility service lines and the availability and cost of all utility services for the Property including, but not limited to, power, natural gas, electricity, telephone, and cable TV. Buyer is advised that the Property may not be connected to public water and/or public sewer, and applicable fees may not have been paid. Septic tanks may need to be pumped. Leach fields may need to be inspected.

11. WATER: Buyer is advised to consult with the water service provider for the Property and with other appropriate professionals regarding the source, quality, and availability of water for the Property; and regarding all applicable fees and costs (including, without limitation, connection fees, stand-by fees and service fees), use and regulatory restrictions, and ownership of water rights and water system. Depending upon the location of the Property, the water service provider, and climate conditions, water service to the Property may be interrupted. A well and well system may require inspection. Buyer is further advised that, depending upon the location of the Property, State and local laws may impose specific requirements regarding the source, the capacity, and the quality of water that will service new plat or building permit applications. Such water-related laws may directly impact Buyer's ability to develop the Property and/or obtain a building permit for any improvements to the Property. Buyer is advised to consult directly with applicable State and local authorities, and with legal counsel, regarding the current and potential effect of such water-related laws.

12. GEOLOGIC CONDITIONS: Buyer is advised to consult with appropriate professionals regarding possible geologic conditions on or near the Property. Such geologic conditions may include, but are not limited to, soil and terrain stability, the existence of landslides, drainage problems, and any building and/or zoning requirements relating to such geologic conditions.

13. MOLD: Buyer is advised to consult with appropriate professionals to determine the possible existence of mold in the Property. Water leaks and water damage to the Property may result in mold that may have adverse health effects. Additional information regarding mold is available through the EPA at www.epa.gov.

14. HOUSING COMPLIANCE: Buyer is advised to consult with appropriate professionals regarding neighborhood or property conditions including, but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards, or circumstances. All properties will be shown without regard to race, color, religion, sex, national origin, handicap or familial status and any other requirements of federal and state fair housing laws.

15. PROPERTY TAXES: Buyer is also advised that, depending upon present use, the Property may be taxed as "Greenbelt". A purchase of the Property may change the Greenbelt status and the amount of property taxes assessed by the County. Such change in Greenbelt status may also result in liability for roll-back taxes. If Buyer has any questions regarding County property tax requirements, Buyer is advised to consult directly with the County Assessor's Office.

16. INCOME TAX/LEGAL CONSEQUENCES: Buyer is advised that this transaction has tax and legal consequences. Buyer is advised to consult with appropriate legal and tax advisors regarding this transaction.

RECEIPT AND ACKNOWLEDGEMENT OF BUYER

I have carefully reviewed this BUYER DUE DILIGENCE CHECKLIST. I understand my right and the recommendation of the Company to consult with appropriate experts and professionals prior to, or as part of an offer to purchase any property. I FURTHER UNDERSTAND THAT I HAVE THE RIGHT TO INCLUDE ANY OR ALL OF THE ABOVE ISSUES AS A CONDITION OF MY OFFER TO PURCHASE ANY PROPERTY.

Buyer Signature

Date

Buyer Signature

Date

#25

~~APP~~ Plntf Motn Reconsider 340

7-7-01 R.L.S.

REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

ID# ES070207 B DATE 7-20-07
LISTING AGENCY Exit Realty of B.L. Office Phone # _____ Fax # _____
Listing Agent Dorothy Ralls E-Mail _____ Phone # _____
SELLING AGENCY Exit Realty of B.L. Office Phone # 867-8200 Fax # 847-3203
Selling Agent Evan Spence E-Mail _____ Phone # _____

1. BUYER: Three Bar Ranches Inc. (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES" COMMONLY KNOWN AS Stephens Ranch City Montpelier County, ID. Zip 83254 legally described as: See Addendum One

OR Legal Description Attached as addendum # One (Addendum must accompany original offer.)

2. \$ 700,000 PURCHASE PRICE: Seven Hundred Thousand DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

\$ 1000.00 (A). EARNEST MONEY: BUYER hereby deposits One Thousand DOLLARS as Earnest Money evidenced by: ☐ cash ☒ personal check ☐ cashier's check ☐ note (due date: _____) and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account ☐ upon receipt, or ☐ upon acceptance by all parties and shall be held by: ☐ Listing Broker ☐ Selling Broker ☐ other _____ for the benefit of the parties hereto. The responsible Broker shall be _____

(B). ALL CASH OFFER: ☒ NO ☐ YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with "0" (ZERO.) IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

5. (C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:
☐ FIRST LOAN OF \$ _____ not including mortgage insurance, through ☐ FHA, ☐ VA, ☐ CONVENTIONAL, ☐ IHFA, ☐ RURAL DEVELOPMENT, ☐ OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: ☐ Fixed Rate ☐ Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the ☐ BUYER ☐ SELLER ☐ Divided Equally ☐ N/A.

☐ SECOND LOAN OF \$ _____ with interest not to exceed _____ % for a period of _____ year(s) at: ☐ Fixed Rate ☐ Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the ☐ BUYER ☐ SELLER ☐ Divided Equally ☐ N/A.

LOAN APPLICATION: BUYER ☐ has applied ☐ shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____ business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER.

FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees required by FHA or VA.

\$ 202,000 (D). ADDITIONAL FINANCIAL TERMS:

☒ Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
☐ Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.
Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.

\$ 202,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s) shall be adjusted at closing of escrow in: ☐ Cash ☐ Other: _____

BUYER'S Initials (CR) Date 7/2/07

SELLER'S Initials (AS) Date 7-5-07

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 1 of 6 JULY 2006 EDITION

Exh. No. 25
Date 10-8-10
Name D. Sullivan
M & M Court Reporting

000133

241

PROPERTY ADDRESS: Stephens Ranch Hwy 30 ID# LS070207B

4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing

Included is all available water from Bennington + Montpelier
irrigation + all available oil + mineral. 100 shares of Montpelier Irrigation
+ 900 shares of Bennington Irrigation
crops to stay with lease for 2007 -
Acres has not been surveyed. Contingent upon Appraisal coming in
at purchase price + home to be inspected + passing to Buyer's approval.
Buyers to have option to do a 10/31 exchange

5. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable. It is agreed that any item included in this section is of nominal value less than \$100.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Disc 4385 - Tractor T&T
Antique - All furniture in home that seller wishes to leave -
All available wheel lines + all hand lines

(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:

6. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

7. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.

(A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, ☐ SELLER or ☐ BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have _____ business day(s) from receipt of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within _____ business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). TITLE COMPANY: The parties agree that Northwestern Title Title Company located at 1111 1st St shall provide the title policy and preliminary report of commitment.

(C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Closing Agency in writing and pay any increase in cost unless otherwise provided herein.

(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the General Contractor Disclosure Statement.

BUYER'S Initials (JS) () Date 7/02/07 SELLER'S Initials (RS) (BS) Date 7-5-07

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED.
Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

1111 1st St
plnt + motn Reconsider

342

PROPERTY ADDRESS: Stephens RanchID#: ES070207B**9. INSPECTION:**

(A). BUYER chooses ☒ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip section 9C. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 10 business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproval of items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B). FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 5 business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER'S inspection contingency.

3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 5 business days that they will not continue with the transaction and will receive their Earnest Money back.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens, indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. LEAD PAINT DISCLOSURE: The subject property ☒ is ☐ is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of SELLER'S Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER'S right to have the property tested for lead-based paint hazards to be completed no later than _____ or the contingency will terminate, (d) that BUYER hereby ☒ waives ☐ does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 56, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property Disclosure Form" or other acceptable form prior to signing this Agreement: ☐ Yes ☐ No ☐ N/A

13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's. ☐ Yes ☒ No

14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents: ☐ Yes ☐ No ☐ N/A Association fees/dues are \$ _____ per _____ ☐ BUYER ☐ SELLER ☐ N/A to pay Homeowner's Association SET UP FEE of \$ _____ and/or property TRANSFER FEES of \$ _____ at closing.

15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

BUYER'S Initials (JS) Date 7/02/07SELLER'S Initials (RS) Date 7-5-07

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

1111 Plntf Motn Reconsider 343

222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275

PROPERTY ADDRESS: 5100 S. 2000 E. SALT LAKE CITY, UT 84115 ID#: ES070207 B

16. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ 5000 of lender required repair costs only. BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

| | BUYER | SELLER | Shared Equally | N/A | | BUYER | SELLER | Shared Equally | N/A |
|---|-------|--------|----------------|-----|---|-------|--------|----------------|-----|
| Appraisal Fee | X | | | | Title Ins. Standard Coverage Owner's Policy | | X | | |
| Appraisal Re-Inspection Fee | | | | X | Title Ins. Extended Coverage Lender's Policy - Mortgagee Policy | | | | X |
| Closing Escrow Fee | | | X | | Additional Title Coverage | | | | X |
| Lender Document Preparation Fee | | | | X | Fuel in Tank - Amount to be Determined by Supplier | | | | X |
| Tax Service Fee | | | | X | Well Inspection | | | | X |
| Flood Certification/Tracking Fee | | | | X | Septic Inspections | | | | X |
| Lender Required Inspections | | | | X | Septic Pumping | | | | X |
| Attorney Contract Preparation or Review Fee | | | | X | Survey | | | | X |
| | | | | | | | | | |
| | | | | | | | | | |

17. OCCUPANCY: BUYER ☒ does ☐ does not intend to occupy property as BUYER'S primary residence.

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the premises approximately 5 calendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) Sept 11 07

The parties agree that the CLOSING AGENCY for this transaction shall be Northern Title located at 1111 N. 1000 E. SALT LAKE CITY, UT 84115

If a long-term escrow / collection is involved, then the long-term escrow holder shall be _____

21. POSSESSION: BUYER shall be entitled to possession ☒ upon closing or ☐ date _____ time _____ ☐ A.M. ☐ P.M. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of Closing Date.

22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

BUYER'S Initials (JS) Date 7/02/07 SELLER'S Initials (ES) Date 7-5-07

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®, Inc. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

Appx Plaintiff Motn Reconsider 344

PROPERTY ADDRESS: ST. Mary's Church, Ketchikan

ID#: LS070207B

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1

- ☐ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☒ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials: ES Date 7/02/07

SELLER'S Initials: RL Date 7-9-07

PROPERTY ADDRESS: Stephens Ranch

ID#: ES070207 B

32. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) July 6, 07 at (Local Time in which property is located) 5 ☐ A.M. ☒ P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

36. BUYER'S SIGNATURES:

☐ SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

BUYER Signature Three - Bar Rader, L

BUYER (Print Name) _____

Date 7/02/07 Time 11:28 ☐ A.M. ☒ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

BUYER Signature _____

BUYER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

☒ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

☐ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

SELLER Signature Roger L. Stephens

SELLER (Print Name) Roger L. Stephens

Date 7-6-07 Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

SELLER Signature Barbara L. Stephens

SELLER (Print Name) Barbara L. Stephens

Date 7-6-07 Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

0001 01-02 with DocuSigner

346

Jun. 12. 2008 7:51 PM

Exit Realty Destinations

FAX: 2088470881

Jul 26 2007 12:19

No. 1509 P. 11
P. 05

"EXHIBIT A"

Addendum One

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 1.80 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 35' WEST 13.46 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 89 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 99 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3251 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Initial



000139

Appx Plntf motn Reconsider

347

RE- 13 COUNTER OFFER # One (1, 2, 3, etc.)

THIS COUNTER OFFER SUPERCEDES ALL PRIOR COUNTER OFFERS

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is a COUNTER OFFER to the Purchase and Sale Agreement Dated: 7-2-07ADDRESS: Stephens Ranch ID# _____

BUYER: _____

SELLER: Stephens Family Trust

The parties accept all of the terms and conditions in the above-designated Purchase and Sale Agreement with the following changes:

☒ This is a SELLER counter offer. The SELLER reserves the right to withdraw this offer or accept any other offers prior to the receipt of a true copy of signed acceptance of this Counter Offer within the time frame specified herein.☐ This is a BUYER counter offer. The undersigned BUYER reserves the right to withdraw this offer at any time prior to the receipt of a true copy of signed acceptance of this Counter Offer within the time frame specified herein.PURCHASE PRICE \$ 800,000 EIGHT HUNDRED THOUSAND DOLLARSDOWN PAYMENT 1/3 OF \$ 800,000 (\$ 266,667)CARRY BALANCE OF \$ 533,333 ON 10 YEAR CONTRACT AT 8 1/2% INTERESTEARNEST MONEY DOWN \$ 3,000

3 1/2%

28,000 - 30,000

To the extent the terms of this Counter Offer modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums, the terms in this Counter Offer shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums not modified by this Counter Offer shall remain the same. Buyer and Seller acknowledge the down payment and/or loan amount on Page 1 of Purchase & Sale Agreement may change if purchase price is changed as part of this Counter Offer. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

If a signed acceptance is not delivered on or before (date): 7.18.07 at 5:00 A.M. / P.M. this Counter Offer shall be deemed to have expired.

DELIVERY: Delivery shall be to the agent/broker working with the maker of the Counter Offer in person, by mail, facsimile or electronic transmission of any signed original document, and retransmission of any signed original document. Retransmission of any signed facsimile or electronic transmission shall be deemed to be the same as delivery of an original.

X SELLER Edward Stephens FOR Roger Stephens Date 7.9.07 Time 5:00 A.M. / P.M.

SELLER _____ Date _____ Time _____ A.M. / P.M.

BUYER Frank R. Ruck, Jr. Date 7/11/07 Time 1:47 A.M. / P.M.

BUYER [Signature] Date _____ Time _____ A.M. / P.M.

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed and is provided only for use by real estate professionals who are members of the National Association of REALTORS®.

USE BY ANY OTHER PERSON IS PROHIBITED.
© Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

37 10:09 FAX 801 322 8844

FIRST AMERICAN TITLE

002/002

RE-11 ADDENDUM 117.00000000 PAGE 1 OF 1



RE-11 ADDENDUM # _____ (1,2,3, etc.)

Date: July 30, 07

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement. (Addendum means that the information below is added material for the agreement (such as facts or descriptions) and/or means the term is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: 7/2/07 ID: ES07027BADDRESS: Stephens Ranch n. of MinneapolisBUYER(S): Steven CummingsSELLER(S): Three Bar Ranch LLC

The undersigned parties hereby agree as follows:

Assignment of The Purchase and Sale Agreement from Rodgers Stevens to Three Bar Ranch LLC to Steven Cummings
Purchase and sales agreement dated 7-2-07
ID # ES07027B. All terms and purchase price to remain the same except Steven Cummings to pay \$85,000.00 with \$20,000 going to Three Bar Ranch LLC and the balance to pay off Rodgers Stevens
All included items + excluded items to remain the same. All money paid to be cash at closing.
Closing by 8-3-07

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: _____

Date: 7-30-07

BUYER: _____

Date: _____

SELLER: Three Bar Ranch LLC

Date: _____

SELLER: By [Signature]Date: 8/01/07

This form is printed and distributed by the National Association of REALTORS® Inc. This form has been designed for use by the real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright 2006 National Association of REALTORS®, Inc. All rights reserved.

RE-11 ADDENDUM 117.00000000 PAGE 1 OF 1

Printed Using Professional Computer Format Co. On-line Format Software 05/06

000141

Appd Plntff Motn Reconsider 349

RE-11 ADDENDUM # 3 (1,2,3, etc.)Date: Aug 1, 2007

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement.

("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: 7-2-07 ID # ES070207B

ADDRESS: 23951 N. S. Hwy 30

BUYER(S): Three Bar Ranch Inc. by Curtis Bauer

SELLER(S): Roger Stephens Family Trust

The undersigned parties hereby agree as follows:

Seller agrees to let Stephen Cummings take over the operation of Three Bar Ranch Inc. by Curtis Bauer and close up the Roger Stephens property that is the heavy timber to close Aug 3, 2007. This sale to go close during 1031 funds - This will include earned money and closing costs from Cummings. Earned money from Three Bar Ranch to be returned to him.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: _____

Date: _____

BUYER: _____

Date: _____

SELLER: Roger L. Stephens, Trustee

Date: 8-3-07

SELLER: Richard L. Stephens

Date: 8-3-07

This form is printed and distributed by the Idaho Association of REALTORS® Inc. This form has been designed for and is provided only for the real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED.
©Copyright Idaho Association of REALTORS®, Inc., All rights reserved.

ALL Plntf motu Reconsider 350

Right Now You Are A Customer

The law requires *all* real estate licensees to perform certain *basic duties* when dealing with *any* real estate buyer or seller. You can expect *any* real estate licensee you deal with to provide the following "customer-level" services:

- ✓ To perform necessary and customary acts to assist you in the purchase or sale of real estate;
- ✓ To perform these acts in good faith and with reasonable care;
- ✓ To properly account for money or other property you place in his or her care; and
- ✓ To disclose "adverse material facts" which are, or should be, within that licensee's knowledge. These include facts that would significantly affect the desirability or value of the property to a reasonable person, and facts that would indicate to a reasonable person that one of the parties cannot, or will not, complete his obligations under the contract. (Note: Idaho law exempts "psychological" impacts from this disclosure requirement. See Section 55-2701, Idaho Code).

Unless or until you enter a written agreement with the brokerage for agency representation, you are considered a "Customer" of the brokerage, and the brokerage will not act as your agent. As a Customer, you should not expect the brokerage or its licensees to promote your best interest, or to keep your bargaining information confidential.

Whenever you speak to a licensee who represents a party on the other side of the transaction, (e.g., you are seeking to buy the property, and the licensee represents the seller), you should assume that any information you provide *will be shared* with the other party.

You May Become A Client

If offered by the real estate brokerage, you may enter a written agreement for "Agency Representation," requiring that the brokerage and its licensees act as an "Agent" on your behalf and promote your best interests as their "Client." Idaho law authorizes three types of Agency Representation.

SINGLE AGENCY

If you enter a written agreement for Agency Representation, you, as a Client, can expect the real estate brokerage to provide the following services, in addition to the basic duties and obligations required of all licensees:

- ✓ To perform the terms of your written agreement with skill and care;
- ✓ To promote your best interest, in good faith, honesty and fair dealing:

- *If you are the seller*, this includes seeking a buyer to purchase your property at a price and under terms and conditions acceptable to you, and assisting in the negotiation thereof; and, upon your written request, asking for reasonable proof of a prospective buyer's financial ability to purchase your property;

- *If you are the buyer*, this includes seeking a property to purchase at an acceptable price, terms and conditions, and assisting in the negotiation thereof; and, when appropriate, advising you to obtain professional inspections of the property, or to seek appropriate tax, legal and other professional advice or counsel.

- ✓ To maintain the confidentiality of specific client information, including bargaining information, even after the representation has ended.

Remember!
Unless you enter a written agreement for Agency Representation, you will NOT be represented at all.

LIMITED DUAL AGENCY

At the time you enter an agreement for Agency Representation, you may be asked to give written consent allowing the brokerage to represent both you and the other party in a transaction. This "dual agency" situation can arise when, for example, the brokerage that represents you, the seller, also represents buyers who may be interested in purchasing your property. When this occurs, it is necessary that the brokerage's representation duties be "limited" because a buyer and seller have built-in conflicts of interest. Most significantly, the buyer typically wants the property at the lowest price, while the seller wants top dollar. *As a "limited dual agent," the brokerage and its licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning price negotiations, terms or factors motivating the client/buyer to buy or the client/seller to sell.* However, the brokerage must otherwise promote the best interests of both parties, perform the terms of the written representation agreement with skill and care, and perform all other duties required by law.

Buyers and sellers alike often find it desirable to consent to limited dual agency: buyers do not want the brokerage to be restricted in the search for suitable properties, and sellers do not want the brokerage to be restricted in the search for suitable buyers. Thus, when all parties agree in writing, a brokerage may legally represent both the buyer and the seller in the same transaction, but only as a "limited dual agent."

LIMITED DUAL AGENCY WITH ASSIGNED AGENTS

In some situations, a brokerage that has obtained consent to represent both parties as a limited dual agent may assign individual licensees ("sales associates") to act solely on behalf of each party. (The brokerage must have an office policy that ensures client confidences are protected.) Where this is the case, the sales associate, or "assigned agent," is not limited by the brokerage's agency relationship with the other party, but instead has a duty to promote the best interest of the client that he or she is assigned to represent, including negotiating a price. The designated broker (the licensee who supervises the sales associates in the brokerage firm) remains a limited dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

RECEIPT ACKNOWLEDGED

Your signature below indicates only the receipt of the Idaho Real Estate Commission's brochure titled "Agency Law in Idaho." Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure. §54-2085

Signature Curtis J. [Signature]

Date 7/02/07

Signature

Date

1001 print mtn Remsider 351

**Imperial Builders And
Developers**

2527 Jefferson Ave
Ogden, UT
(801) 338-3333

1010 N Hill Field Rd
Layton, UT 84041
801-927-XXXX

DATE 07/26/2007

PAY TO THE
ORDER OF

**3,000.00

DOLLARS

MEMO Earnest Money Stevens Property

⑆1236⑆ ⑆124303023⑆ 21003801⑆ 2248

Deposit:

(Check One) ☐ Checking ☐ Savings ☐ Money Market Access

Checking, Savings, Money Market Access account number

* 89 00 25 0617 Date 7/26/07

| | |
|--|--|
| Please print Name <i>Edie Realty</i> | |
| Please print Street Address, City, State, Zip Code | |

Deposits may not be available
for immediate withdrawal.
See Delayed Posting
information on reverse.

Cash

Total Checks (Deposited total
minus cash received)

Subtotal

Minus cash received

Total \$

3000.00

3000.00

X
Bank Use Only (When SVT is Not Available)

| | |
|--|-----------|
| Customer ID | Exp. date |
| Teller Verified (✓) <input type="checkbox"/> | Approval |

TLPS007 (12/04) W0017

⑆997129949⑆ ⑆500000377⑆

**Wells Fargo Bank
Transaction Record**

| | |
|--------------------|-------------|
| STORE # 01797 03 | Deposit |
| Account Number | XXXX-XX0617 |
| 00113 | |
| Cash In | \$0.00 |
| Number of checks | 1 |
| Total Deposited | \$3,000.00 |
| Less Cash | \$3,000.00 |
| Net Deposit Amount | \$0.00 |
| | \$3,000.00 |

Transaction # 007 0510
04:54PM 07/26/07 Credited: 07/27/07

Thank you, Janalee

000144

A Settlement Statement

U.S. Department of Housing
and Urban Development

OMB Approval No. 2502-0765

| | | | | |
|--|--|--|-----------------------|--|
| B. Type Of Loan <input type="checkbox"/> FHA <input type="checkbox"/> FmHA <input type="checkbox"/> Conv. Units <input type="checkbox"/> VA <input type="checkbox"/> Conv. Ins. | | 6. File Number NTBL-1183 | 7. Loan Number | 8. Mortgage Insurance Case Number |
| C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals. | | | | |
| D. Name and Address of Borrower CUMMINGS, STEVEN B. 43 NORTH 100 EAST AMERICAN FORK UT 84003 | | E. Name and Address of Seller ROGER L. STEPHENS TRUSTEE BARBARA L. STEPHENS TRUSTEE STEPHENS FAMILY TRUST | | F. Name and Address of Lender |
| G. Property Location 3167 MONTEPLIER ID 83254 T4054F.SENE.FSENW T84FNENW,N2NE 21-12-44 | | H. Settlement Agent NORTHERN TITLE COMPANY OF IDAHO Place of Settlement 880 NORTH 4TH STREET, STE 1 MONTPELIER, ID 83254 Settlement Date 8/3/2007 Disbursement Date 8/3/2007 | | |
| J. Summary of Borrower's Transaction 100. Gross Amount Due From Borrower 101. Contract Sales Price 800,000.00 102. Personal Property 103. Settlement Charges to borrower (line 1400) 1,017.50 104. ASG OF REPC-3BAR RANCHES 49,857.00 105. (LESS LINE 1108B) Adjustments for items paid by seller in advance 106. City/Town Taxes to 107. County Taxes to 108. Assessments to 109. 110. 111. 112. | | K. Summary of Seller's Transaction 400. Gross Amount Due To Seller 401. Contract Sales Price 800,000.00 402. Personal Property 403. 404. 405. Adjustments for items paid by seller in advance 406. City/Town Taxes to 407. County Taxes to 408. Assessments to 409. 410. 411. 412. | | |
| 120. Gross Amount Due From Borrower 850,904.50 200. Amounts paid By Or In Behalf Of Borrower 201. Deposit or earnest money 202. Principal amount of new loan(s) 203. Existing loan(s) taken subject to 204. 1031 PROCEEDS 850,239.63 205. 206. 207. 208. 209. Adjustments for items unpaid by seller 210. City/Town Taxes to 211. County Taxes 1/1/2007 to 8/3/2007 654.67 212. Assessments to 213. 214. 215. 216. 217. 218. 219. | | 420. Gross Amount Due To Seller 800,000.00 500. Reductions In Amount Due To Seller 501. Excess deposit (see instructions) 502. Settlement charges to seller (line 1400) 51,207.50 503. Existing loan(s) taken subject to 504. Payoff of first mortgage loan 505. Payoff of second mortgage loan 506. 507. 508. 509. Adjustments for items unpaid by seller 510. City/Town Taxes to 511. County Taxes 1/1/2007 to 8/3/2007 654.67 512. Assessments to 513. 514. 515. 516. 517. 518. 519. | | |
| 220. Total paid By/For Borrower 850,904.50 300. Cash At Settlement From/To Borrower 301. Gross Amount due from borrower (line 120) 850,904.50 302. Less amounts paid by/for borrower (line 220) 850,904.50 303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower 0.00 | | 520. Total Reduction Amount Due Seller 51,672.37 600. Cash At Settlement To/From Seller 601. Gross Amount due to seller (line 420) 800,000.00 602. Less reductions in amt. due seller (line 520) 51,672.37 603. Cash <input checked="" type="checkbox"/> To <input type="checkbox"/> From Seller 748,327.63 | | |

** Tax estimate based on 2008 taxes. **

The HUD-1 settlement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

John Thompson
Settlement Agent

8/3/07
Date

000145

APP.1 vintf motu Reconsider 353

| L. Settlement Charges | | | | P | vm | Paid From |
|--|-------------|---------------------------------|-----------|------------|----|------------|
| 700. Total Sales/Brokers Commission based on price \$ 500,000.00 @ 8 % = 40,000.00 | | | | L | % | Seller's |
| Division of Commission (Line 700) as follows: | | | | FL | % | Fund's at |
| 701. \$ | to | EXI. | ALTY | Settlement | | Settlement |
| 702. \$ | to | | | | | |
| 703. Commission paid at Settlement | | | | | | 40,000.00 |
| 704. | | | | | | |
| 800. Items Payable in Connection With Loan | | | | | | |
| 801. Loan Origination Fee | % | | | | | |
| 802. Loan Discount | % | | | | | |
| 803. Appraisal Fee | to | | | | | |
| 804. Credit Report | to | | | | | |
| 805. Lender's Inspection Fee | to | | | | | |
| 806. Mortgage Insurance Application Fee | to | | | | | |
| 807. Assumption Fee | to | | | | | |
| 808. | | | | | | |
| 809. | | | | | | |
| 810. | | | | | | |
| 811. | | | | | | |
| 812. | | | | | | |
| 813. | | | | | | |
| 814. | | | | | | |
| 815. | | | | | | |
| 816. | | | | | | |
| 817. | | | | | | |
| 900. Items Required By Lender To Be Paid In Advance | | | | | | |
| 901. Interest from | to | @ \$ | 1 day | | | |
| 902. Mortgage Insurance Premium for | months to | | | | | |
| 903. Hazard Insurance Premium for | years to | | | | | |
| 904. | years to | | | | | |
| 905. | | | | | | |
| 1000. Reserves Deposited With Lender | | | | | | |
| 1001. Hazard Insurance | months @ \$ | | per month | | | |
| 1002. Mortgage Insurance | months @ \$ | | per month | | | |
| 1003. City Property Taxes | months @ \$ | | per month | | | |
| 1004. County Property Taxes | months @ \$ | | per month | | | |
| 1005. Annual Assessments | months @ \$ | | per month | | | |
| 1006. | months @ \$ | | per month | | | |
| 1007. | months @ \$ | | per month | | | |
| 1008. | | | | | | |
| 1100. Title Charges | | | | | | |
| 1101. Settlement or Closing Fee | to | NORTHERN TITLE COMPANY OF IDAHO | | 837.50 | | 837.50 |
| 1102. Abstract or Title Search | to | | | | | |
| 1103. Title Examination | to | | | | | |
| 1104. Title Insurance Binder | to | | | | | |
| 1105. Document Preparation | to | NORTHERN TITLE COMPANY OF IDAHO | | 20.00 | | 20.00 |
| 1106. Notary Fees | to | | | | | |
| 1107. Attorney's Fees | to | | | | | |
| (includes above items number) | | | | | | |
| 1108. Title Insurance | to | NORTHERN TITLE COMPANY OF IDAHO | | 113.00 | | 2,330.00 |
| (includes above items number) | | | | | | |
| 1109. Lender's Coverage | \$ | | | | | |
| 1110. Owner's Coverage | \$ | 250,000.00 | | | | |
| 1111. Endorsements | | | | | | |
| 1112. WIRE FEE | | | | 15.00 | | |
| 1113. COURIER FEE | | | | 20.00 | | 20.00 |
| 1200. Government Recording and Transfer Charges | | | | | | |
| 1201. Recording fee: Deed \$ | 12.00 | Mortgage \$ | | Release \$ | | 12.00 |
| 1202. City/County Tax Stamps: Deed \$ | | Mortgage \$ | | | | |
| 1203. State Tax Stamps: Deed \$ | | Mortgage \$ | | | | |
| 1204. | | | | | | |
| 1205. | | | | | | |
| 1300. Additional Settlement Charges | | | | | | |
| 1301. Survey | to | | | | | |
| 1302. Pest Inspection | to | | | | | |
| 1303. | | | | | | |
| 1304. | | | | | | |
| 1305. | | | | | | |
| 1400. Total Settlement Charges (enter on line 101, Section J and 502, Section K) | | | | 1,017.50 | | 51,207.50 |

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrowers CUMMINGS, STEVEN B.

Roger L. Stephens, Trustee
Sellers ROGER L. STEPHENS TRUSTEE

Barbara L. Stephens
BARBARA L. STEPHENS TRUSTEE

Settlement Statement

U.S. Department of Housing
and Urban Development

OMB Approval No. 2502-0203

| | | | | |
|---|--|------------------------------------|-----------------------|--|
| E. Type Of Loan <input type="checkbox"/> FHA <input type="checkbox"/> FARM <input type="checkbox"/> Conv. Unit <input type="checkbox"/> VA <input type="checkbox"/> Conv. Ins. | | 6. File Number NTBL-1163 | 7. Loan Number | 8. Mortgage Insurance Case Number |
|---|--|------------------------------------|-----------------------|--|

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "p.o.c." were paid outside this closing. They are shown here for informational purposes and are not included in the totals.

| | | |
|--|---|--------------------------------------|
| D. Name and Address of Borrower CUMMINGS, STEVEN B. 43 NORTH 100 EAST AMERICAN FORK UT 84003 | E. Name and Address of Seller ROGER L. STEPHENS TRUSTEE BARBARA L. STEPHENS TRUSTEE STEPHENS FAMILY TRUST | F. Name and Address of Lender |
|--|---|--------------------------------------|

| | |
|---|--|
| G. Property Location 3167 MONTEPLER D 83254 T4054F SENE F SENW T64 F NENW N2NE 21-12-44 | H. Settlement Agent NORTHERN TITLE COMPANY OF IDAHO 82-0522129 Place of Settlement 680 NORTH 4TH STREET, STE 1 8/3/2007 Disbursement Date 8/3/2007 MONTEPLER, ID 83254 |
|---|--|

| | | | |
|--|------------|---|------------|
| J. Summary of Borrower's Transaction | | K. Summary of Seller's Transaction | |
| 100. Gross Amount Due From Borrower | | 400. Gross Amount Due To Seller | |
| 101. Contract Sales Price | 800,000.00 | 401. Contract Sales Price | 800,000.00 |
| 102. Personal Property | | 402. Personal Property | |
| 103. Settlement Charges to borrower (line 1400) | 1,017.50 | 403. | |
| 104. ASG OF REPC-3BARRANCHES | 48,887.00 | 404. | |
| 105. LESS LINE 1100B | | 405. | |
| Adjustments for items paid by seller in advance | | Adjustments for items paid by seller in advance | |
| 106. City/Town Taxes to | | 406. City/Town Taxes to | |
| 107. County Taxes to | | 407. County Taxes to | |
| 108. Assessments to | | 408. Assessments to | |
| 109. | | 409. | |
| 110. | | 410. | |
| 111. | | 411. | |
| 112. | | 412. | |
| 120. Gross Amount Due From Borrower | 850,904.50 | 420. Gross Amount Due To Seller | 800,000.00 |
| 200. Amounts paid By Or In Behalf Of Borrower | | 500. Reductions in Amount Due To Seller | |
| 201. Deposit of earnest money | | 501. Excess deposit (see instructions) | |
| 202. Principal amount of new loan(s) | | 502. Settlement charges to seller (line 1400) | 51,207.66 |
| 203. Existing loan(s) taken subject to | | 503. Existing loan(s) taken subject to | |
| 204. 1031 PROCEEDS | 850,739.63 | 504. Payoff of first mortgage loan | |
| 205. | | 505. Payoff of second mortgage loan | |
| 206. | | 506. | |
| 207. | | 507. | |
| 208. | | 508. | |
| 209. | | 509. | |
| Adjustments for items unpaid by seller | | Adjustments for items unpaid by seller | |
| 210. City/Town Taxes to | | 510. City/Town Taxes to | |
| 211. County Taxes 1/1/2007 to 8/3/2007 | 664.87 | 511. County Taxes 1/1/2007 to 8/3/2007 | 664.87 |
| 212. Assessments to | | 512. Assessments to | |
| 213. | | 513. | |
| 214. | | 514. | |
| 215. | | 515. | |
| 216. | | 516. | |
| 217. | | 517. | |
| 218. | | 518. | |
| 219. | | 519. | |
| 220. Total paid By/for Borrower | 850,904.50 | 520. Total Reduction Amount Due Seller | 51,872.37 |
| 300. Cash At Settlement From/To Borrower | | 600. Cash At Settlement To/From Seller | |
| 301. Gross Amount due from borrower (line 120) | 850,904.50 | 601. Gross Amount due to seller (line 420) | 800,000.00 |
| 302. Less amounts paid by/for borrower (line 220) | 850,904.50 | 602. Less reductions in amt. due seller (line 520) | 51,872.37 |
| 303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower | 0.00 | 603. Cash <input checked="" type="checkbox"/> To <input type="checkbox"/> From Seller | 748,127.50 |

** Tax estimate based on 2006 taxes **
 The HUD-1 settlement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent

Date

000147

Appd Plntf motn Reconsider

355

| L Settlement Charges | | | | Paid From Borrower's Fund's at Settlement | Paid From Seller's Fund's at Settlement |
|--|------------------------------------|-----------------------------|---------------------------------|--|--|
| 700. Total Sales/Broker's Commis | | paid on price of 800,000.00 | 0.8 % = 48,000.00 | | |
| Division of Commission (Line -) follows: | | | | | |
| 701 | \$ 48,000.00 | to | EXIT REALTY | | |
| 702 | \$ | to | | | |
| 703 | Commission paid at Settlement | | | | 48,000.00 |
| 704 | | | | | |
| 800. Items Payable in Connection With Loan | | | | | |
| 801 | Loan Origination Fee | % | | | |
| 802 | Loan Discount | % | | | |
| 803 | Appraisal Fee | to | | | |
| 804 | Credit Report | to | | | |
| 805 | Lender's Inspection Fee | to | | | |
| 806 | Mortgage Insurance Application Fee | to | | | |
| 807 | Assumption Fee | to | | | |
| 808 | | | | | |
| 809 | | | | | |
| 810 | | | | | |
| 811 | | | | | |
| 812 | | | | | |
| 813 | | | | | |
| 814 | | | | | |
| 815 | | | | | |
| 816 | | | | | |
| 817 | | | | | |
| 900. Items Required By Lender To Be Paid in Advance | | | | | |
| 901 | Interest from | to | @ % | day | |
| 902 | Mortgage Insurance Premium for | months to | | | |
| 903 | Hazard Insurance Premium for | years to | | | |
| 904 | | years to | | | |
| 905 | | | | | |
| 1000. Reserves Deposited With Lender | | | | | |
| 1001 | Hazard Insurance | months @ \$ | per month | | |
| 1002 | Mortgage Insurance | months @ \$ | per month | | |
| 1003 | City Property Taxes | months @ \$ | per month | | |
| 1004 | County Property Taxes | months @ \$ | per month | | |
| 1005 | Annual Assessments | months @ \$ | per month | | |
| 1006 | | months @ \$ | per month | | |
| 1007 | | months @ \$ | per month | | |
| 1008 | | | | | |
| 1100. Title Charges | | | | | |
| 1101 | Settlement or Closing Fee | to | NORTHERN TITLE COMPANY OF IDAHO | 637.50 | 637.50 |
| 1102 | Abstract or Title Search | to | | | |
| 1103 | Title Examination | to | | | |
| 1104 | Title Insurance Binder | to | | | |
| 1105 | Document Preparation | to | NORTHERN TITLE COMPANY OF IDAHO | 20.00 | 20.00 |
| 1106 | Notary Fees | to | | | |
| 1107 | Attorney's Fees | to | | | |
| (includes above items number) | | | | | |
| 1108 | Title Insurance | to | NORTHERN TITLE COMPANY OF IDAHO | 113.00 | 2,330.00 |
| (includes above items number) | | | | | |
| 1109 | Lender's Coverage | \$ | | | |
| 1110 | Owner's Coverage | \$ 650,000.00 | | | |
| 1111 | Endorsements | | | | |
| 1112 | WIREFEE | | | 15.00 | |
| 1113 | COURIERFEE | | | 20.00 | 20.00 |
| 1200. Government Recording and Transfer Charges | | | | | |
| 1201 | Recording fee: Deed \$ | 12.00 | Mortgage \$ | Release \$ | 12.00 |
| 1202 | City/County Tax Stamps: Deed \$ | | Mortgage \$ | | |
| 1203 | State Tax/Stamp: Deed \$ | | Mortgage \$ | | |
| 1204 | | | | | |
| 1205 | | | | | |
| 1300. Additional Settlement Charges | | | | | |
| 1301 | Survey | to | | | |
| 1302 | Peel Inspection | to | | | |
| 1303 | | | | | |
| 1304 | | | | | |
| 1305 | | | | | |
| 1400. Total Settlement Charges (enter on line 102, Section J and 502, Section K) | | | | 1,017.50 | 5,207.50 |

I have carefully reviewed the above Settlement Statement and to the best of my knowledge and belief, the above and accurate statement of all receipts and disbursements made on my account

every item in this statement. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower: CUMMINGS, STEPHEN

Seller: ROGER L. STEPHEN TRUSTEE

BARBARA L. STEPHENS TRUSTEE

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S.C. Section 1001 and Section 1010.

000148

APP1 01/11/11 matn 2 consider

356

Transaction # 205407-074Memo # 205156 070730303

Exit Realty of Bear Lake/Transaction Ledger Card

Buyer Curtis Baum Seller Roger StephensProperty Address 23451 113 Hwy 30

| Date | Who, What, Where | Dep. Amt. | Ck. Amt. | Balance |
|------|---|-----------|----------|---------|
| | Contract date: 7/02/07 | | | |
| | Acceptance date: 7/05/07 | | | |
| | Earnest Money Check Number: 2248 | | | |
| | Earnest Money Deposit Date: 7/26/07 | \$3000 | \$3000 | |
| | Additional Earnest Money Check Number: | | | |
| | Additional Earnest Money Deposit Date: | | | |
| | Closing Date: 8/01/07 61.5 acres Closed 8/03/07 | | | |
| | Earnest Money Release Date: 8/07/07 | | | |
| | Earnest Money Released to: Curtis Baum | | | |
| | Imperial Builders & Developers | | | |
| | Check to be mailed to BL office | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Notes:

EM Check Bounced.
EM NOT ReleasedBuyer's Agent Not RepresentedSeller's Agent NotCompany Exit RealtyCompany Exit Realty

000149

all profit motu Reconsider

357



RE-26 NOTICE TO TERMINATE CONTRACT AND RELEASE OF EARNEST MONEY



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT. IF YOU HAVE ANY
QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

RE: Purchase and Sale Agreement Dated: July 5, 2007 ID# BL07-074
Hereinafter referred as "Contract" covering the following described property:

Property Address: 23951 N.S. Hwy 38

Legal Description: T4054 F. SE NW T84 N E NW. N2 NE 21-12-44

BUYER: Three Bar Ranch, Inc.

SELLER: Stephen Family Trust by Proctor & Stephen "Proctor & Stephen"

The undersigned BUYER and SELLER agree that the above real estate Contract WILL NOT be completed and hereby mutually release each other from all further obligations to buy, sell or exchange under the Contract and all related documents, and from all claims, actions, and demands which each may have against the other by reason of said Contract. It is the intent of this agreement that all rights and obligations arising out of said Contract are null and void. BUYER and SELLER further agree to release brokers and their associates from any claims, actions and demands by reason of releasing and disbursing of said earnest money deposit.

Earnest Money Holder: Exit Realty of Great Lake

Amount of Earnest Money: Three Thousand \$ 3000.00

Earnest money holder, is hereby instructed to release and disburse said earnest money deposit in the following manner:

\$ 3000.00 TO: Three Bar Ranch, Inc.

\$ _____ TO: _____

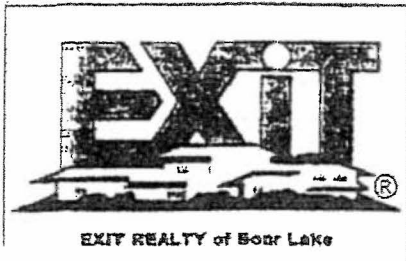
\$ _____ TO: _____

BUYER: [Signature] Date: 8/3/2007

BUYER: _____ Date: _____

SELLER: _____ Date: _____

SELLER: _____ Date: _____



196 South 4th Street
Montpelier, Idaho 83254

Office (208) 847-3200
Fax (208) 847-3203

Facsimile Transmittal Sheet

FROM: Pam

TO: Amille - Natalie DATE: 8/06/07

FAX NUMBER 852-3209

NUMBER OF PAGES (INCLUDING COVER) 34

COMMENTS Release of Earnest Money

DOBLO7-074

AD505 D 070730303

Please release \$3080

Imperial Builders

Curtis Baum

harrison, mail check to our

000152

1111 01111 with 000000000 360

**Imperial Builders And
Developers, Inc.**

2627 Jefferson Avenue
Ogden, UT 84401
(801) 389-1310

1010 N Hill Field Rd
Layton, UT 84041
801-827-5600

DATE 07/26/2007

**3,000.00

DOLLARS

MEMO Earnest Money Stevens Property

⑈1236⑈ ⑆124303023⑆ 21003801⑈ 2248

Deposit:

(Check One) ☐ Checking ☐ Savings ☐ Money Market Access

Checking, Savings, Money Market Access account number

* 89 00 25 06 17 Date 7/26/07

Please print Name
Edie Kealty
Please print Street Address, City, State, Zip Code

Deposits may not be available
for immediate withdrawal.
See Delayed posting
information on reverse.

Cash

Total Credits (including total
debits and other side)

3000.00

Subtotal

Minus cash received

Total \$

3000.00

Use Only (When SVT is Not Available)
Customer ID: Exp. date:
Token Validated ☒ Approve:
TJRBEST (1204) 10/07

⑈997129949⑈ ⑆500000377⑆

**Wells Fargo Bank
Transaction Record**

STORE # 01797 03 Deposit
Account Number XXXX-XX0617
00113
Cash In \$0.00
Number of checks 1
Total Deposited \$3,000.00
LESS Cash \$3,000.00
Net Deposit Amount - \$0.00
\$3,000.00

Transaction # 007 0010
04:54PM 07-26-07 Credited: 07/27/07

Thank you, Janalee

000153

DDI 01...+L math Davidson 361

09-13-07;11:06AM;

1 / 3

#122105278*
07/30/2007
076416790

Is is a LEGAL COPY of your
check. You can use it the same
way you would use the original
check.

RETURN REASON-A
NOT SUFFICIENT FUNDS

122105278 07/30/2007
076416790

| | | | |
|---|--|--|------------|
| Imperial Builders And Developers, 7071 Johnson Ave Ogden, UT 84403 | | American World Bank 1010 N 1000 Pkwy Rm Layton, UT 84041 801-627-0800 | 2248 |
| PAY TO THE ORDER OF | | DATE 07/26/2007 | |
| NO | | | \$2,846.00 |
| | | | DOLLARS |
| MEMO Same World Bank Copy | | | |
| #2248# 6424303023# 21003801# 2248 | | #0000300000# | |

#2248# 6424303023#

#0000300000#

6424303023# 73 #210003801# 2248 #0000300000#

000154

362

0001 01-16 with Document

09-13-07 11:06AM

240 W. CHARLES LINDBERG
SALT LAKE CITY, UT 84116

2 / 3

WELLS
FARGO

EXIT REALTY OF BEAR LAKE LLC
REAL ESTATE TRUST FUND
55 S STATE ST
PRESTON ID 83263-1242

ITEMS ENCLOSED: 1

PAGE 1 OF 1 ACCOUNT CHARGED 8900250617

DATE: 08-02-2007

YOUR ACCOUNT HAS BEEN CHARGED FOR THE FOLLOWING ITEM(S) RETURNED UNPAID.

| | REASON FOR NON-PAYMENT | SEQUENCE # | AMOUNT |
|---------------------------------------|------------------------|------------|----------|
| DEPOSITORY ACCOUNT NUMBER: 8900250617 | | | |
| CHARGES FOR PAPER RETURNS | | | |
| | Insuf Fund | 3430861740 | 3,000.00 |
| TOTAL CHARGES FOR PAPER RETURNS | | | 3,000.00 |

TOTAL CHARGES FOR PAPER RETURNS

3,000.00

SHOULD YOU HAVE ANY QUESTIONS OR REQUIRE ADDITIONAL INFORMATION, PLEASE CALL THE
PHONE NUMBER THAT IS LISTED ON YOUR BANK STATEMENT.

000155

0001 01mtl Math Decision

363

FOR SECURITY PURPOSES, THE WORDS OF THIS DOCUMENT CONTAINS MICROPRINTING

EXIT REALTY OF BEAR LAKE
IDAHO REAL ESTATE TRUST ACCOUNT
55 S. State
Preston, ID 83253

92-579/1241 1041

DATE Aug 7, 2007

PAY TO THE ORDER OF Three Bar Ranches \$ 3,000.00

Three thousand and no/100 DOLLARS

WELLS FARGO

MEMO: 106207-074 Imperio Builders/Curtis Baum
105030070730303

Natalie Zalkin AUTHORIZED SIGNATURE

⑈001041⑈ ⑆124103799⑆ 8900250617⑈

check was voided because the
l.m. deposit was insufficient funds
and did not clear the bank -

EXIT REALTY OF BEAR LAKE
IDAHO REAL ESTATE TRUST / MINT
55 S. State
Preston, ID 83263

2-3701241

1041

DATE Aug 7, 2007

\$ 3,000 ^{00/100}

DOLLARS

WELLS FARGO

EMO: 106107-74 Imperial Builders/Linda Baum

10505 00707 00003

Natalie Zallen

AUTHORIZED SIGNATURE

⑆00104⑆ ⑆124103799⑆ 8900250617⑆

TO
Replace
ISF
em
check

000157

0001 01.48 mth. D. ...

365



196 South 4th Street
Montpelier, Idaho 83254

Office (208) 847-3200
Fax (208) 847-3203

Imperial Builders And Developers, Inc
2827 Jefferson Ave
Ogden, Utah 84401

Mr. Curtis Baum,

Please find attached a copy of your check number 2248, written on July 26, 2007 made payable to Exit Realty of Bear Lake. The check you wrote was for Earnest Money submitted on a purchase and sale contract which you signed agreeing to purchase the Stephen's property. As you will see the check you wrote was returned to us due to insufficient funds.

We understand that you are questioning the reason we did not refund your \$3000 at the completion of the Stephen's contract in which you sold your position for \$50,000. The reason we did not refund the \$3000 was because your check did not clear your bank, therefore we never had the \$3000. If you'll check your banking records you will see that this check was never cashed by us.

We hope you understand now. If we can be of further assistance, please feel free to call.

Pam Jackson
Exit Realty of Bear Lake
196 South 4th Street
Montpelier, Idaho 83254
208-847-3200

000158

ALL Print motu Reconsider

366



Facsimile Transmittal Sheet

From: Pam

DATE: 10/23/07 Number of Pages 27

TO: Ron George Fax Number: 232-9467

COMMENTS: Stephens TO Baum
Baum TO Cummings

This is the contract where Curtis's
check for \$3000 bounced which is why the
\$3000 was not refunded to him.

196 South 4th Street
Montpelier, Idaho 83254

Office (208) 847-3200
Fax (208) 847-3203



000159



Attorneys

Attorneys admitted in
Idaho Oregon Washington Wyoming

435-574-1776

Nathan M. Olsen

2105 Coronado Street • Idaho Falls, ID 83404

Phone (208) 557-5209 • Fax (208) 525-1794

Email nathan@beardstclair.com

June 10, 2008

Ryan L. Olsen
55 South State St.
Preston, ID 83263

Mike Atkinson
538 North 300 West
Malad, ID 83252

RE: The Purchase of the Stephens Ranch by Steven Cummings

Dear Mr. Olsen & Mr. Atkinson,

I have been retained by Steven Cummings to pursue claims against Exit Realty of Bear Lake LLC (Exit Realty) for wrongful actions by the Exit Realty's agents in the purchase of the Stephens Ranch on Highway 30, near Montpelier, Idaho.

In short, Exit Realty agent Evan Skinner committed several violations of statutory duties in his handling of the Stephens Ranch purchase by Mr. Cummings. These violations have caused substantial damages and losses to my client. Because of Skinner's violations of his fiduciary duties as described by law, at the very least my client is entitled to the \$48,000 commission earned by your agency in the transaction and other costs including attorney fees. My client will accept \$60,000 to immediately settle matters.

Last summer Mr. Cummings contacted your agency about a listing of the Stephens Ranch, advertised near Montpelier, Idaho, as consisting of acreage, home, water shares, barns and all necessary facilities to operate the farm. Cummings inquired as to whether the seller would accept a back-up offer, to which Cummings was initially advised that the buyers were "heirs of the Flying J" fortune, and their offer was "rock solid" so that any back up offer would be futile. The following day Cummings was connected with Mr. Skinner and signed a "customer relationship" dated July 26, 2007 (attached.) Skinner represented the property as consisting of tracts of land approximately 270 acres on west side of Highway 30 and an estimated 102 to 110 acres on the east side of Highway 30. Skinner showed Cummings two other larger parcels, one of which was just minutes away consisting of 758 deeded acres for only an additional \$100,000 - \$150,000. Upon performing due diligence, Cummings inquired into basis for property valuation of Stephen's Ranch consisting of half the acreage. Skinner represented Stephen's Ranch to be a very attractive opportunity for future development, in part, due to large amount of frontage on Highway 30. Skinner later explained that the potential buyer was actually a developer by the name of Three Bar Ranches which was purchasing numerous properties in the area and intended to utilize large barn as manufacturing plant for prefab homes

A few days later, Skinner contacted Cummings to indicate that the buyers would accept \$50,000, and other measures to be utilized on other projects in area, to buy an assignment of the contract.

www.beardstclair.com

Winston V. Beard John G. St. Clair Michael D. Gaffney Harlow J. McNamara Gregory C. Calder Janis O. Hammer 000160
Lance I. Schuster Gordon S. Thatcher Jeffrey D. Brunson Nathan M. Olsen John M. Alexander Julie Stomper Blair L. Gannon
1 2 6081 0N 30010101 11X3 WJ967/ 5082 71 000

368

npoi olmtl matu Recanoider

June 10, 2008

Again, based upon value of property on both sides of Highway 30 and initial representations made by Skinner about the property, Cummings decided to pursue the assignment. As part of his due diligence, and before signing the assignment agreement, Cummings obtained a copy of the contract, including the property description (attached). Cummings also obtained the title commitment for the contract (attached). The description describes several tracts of land, including acreage on east side of Highway 30. The assignment was signed on July 30, 2007. However, on or about August 1, 2007, Skinner told Cummings that because of other potential buyers waiting in the wings, and the desire of seller's family members to "maximize" profits of the sale of the property, buyer demanded transaction to be closed within approximately 48 hours on or before August 3, 2007, less than a week after Cummings' initial contact with Skinner. Cummings closed and produced funds to Northern Tile Company on or before August 3, 2007 as demanded.

Mr. Cummings is troubled to have learned that he has not been properly deeded approximately 102-110 acres located on the east side of Highway 30 which was part of the original purchase agreement and always considered a part of the Stephens Ranch. Moreover, Mr. Cummings has incurred costs on a number of issues that should have been disclosed prior to the sale of the property.

Cummings has subsequently learned of several misrepresentations and failures committed by Mr. Skinner and Exit Realty, including the following:

- The original buyers were not "flying J heirs," but were in fact insolvent and not likely to have been able to qualify for financing, thus eviscerating the need for Cummings to "buy" the contract for \$50,000.
- Failing to disclose that the east side parcel was excluded from the deed, thus reducing about 1/3 of the property that Cummings had purchased.
- Failing to provide essential duties toward Cummings as a "customer" (I.C. 55-2791), including the necessary and customary actions to assist Cummings in the purchase of the real estate, performing acts in good faith and with reasonable care, and failing to disclose "adverse material facts."
- Structuring deals for personal gain not disclosed.
- Not properly advertising or listing the size of the real property and the disclosure of the agency relationship with the seller.

There are some issues that you should be aware of in regard to your personal liability in this matter. The public records maintained by the State of Idaho indicate that Exit Realty was dissolved on March 10, 2008. As part of dissolution, the assets of the company are distributed to you as member/owners. According to Idaho law, you are now *personally liable* for actions committed by Exit Realty, including its agents.

Mr. Cummings would prefer to settle these matters expeditiously and without legal action. However, he does believe that he should be fully provided the benefit of his bargain and compensated for damages incurred as a result of other's breach of contract or duties. To that end, he requests that you compensate him \$60,000 which will release all existing and future claims that my client may have against you in regard to this matter.

000161

Page 3

June 10, 2008

I respectfully request a response from you or your attorney within ten days receipt of this letter indicating how you will address these requests and issues raised. If you fail to respond, my client will proceed with appropriate legal action, and according to Idaho law, you will be required to reimburse his attorney and court fees should he prevail.

Sincerely,

Nathan M. Olsen,

attachments

000162

E. H. 6091.00N

EXIT REALTY DESIGNATIONS

WA/6:7 800Z 'Z1'008

370

diff Pmtf mtn Reconsider

10001 010118 mtn Reconsider

No. 1309 P. 4

371 Exit Realty Destinations Jun. 17, 2006 7:47 PM 0001003

Right Now You Are A Customer

The law requires *all* real estate licensees to perform certain *basic duties* when dealing with *any* real estate buyer or seller. You can expect *any* real estate licensee you deal with to provide the following "customer-level" services:

- ✓ To perform necessary and customary acts to assist you in the purchase or sale of real estate;
- ✓ To perform these acts in good faith and with reasonable care;
- ✓ To properly account for money or other property you place in his or her care; and
- ✓ To disclose "adverse material facts" which are, or should be, within that licensee's knowledge. These include facts that would significantly affect the desirability or value of the property to a reasonable person, and facts that would indicate to a reasonable person that one of the parties cannot, or will not, complete his obligations under the contract. (Note: Idaho law exempts "psychological" impacts from this disclosure requirement. See Section 55-2701, Idaho Code).

Unless or until you enter a written agreement with the brokerage for agency representation, you are considered a "Customer" of the brokerage, and the brokerage will not act as your agent. As a Customer, you should not expect the brokerage or its licensees to promote your best interest, or to keep your bargaining information confidential.

Whenever you speak to a licensee who represents a party on the other side of the transaction, (e.g., you are seeking to buy the property, and the licensee represents the seller), you should assume that any information you provide will be shared with the other party.

You May Become A Client

If offered by the real estate brokerage, you may enter a written agreement for "Agency Representation," requiring that the brokerage and its licensees act as an "Agent" on your behalf and promote your best interests as their "Client." Idaho law authorizes three types of Agency Representation.

If you enter a written agreement for Agency Representation, you, as a Client, can expect the real estate brokerage to provide the following services, in addition to the basic duties and obligations required of all licensees:

- ✓ To perform the terms of your written agreement with skill and care;
- ✓ To promote your best interest, in good faith, honesty and fair dealing;
- If you are the seller, this includes seeking a buyer to purchase your property at a price and under terms and conditions acceptable to you, and assisting in the negotiation thereof; and, upon your written request, asking for reasonable proof of a prospective buyer's financial ability to purchase your property;
- If you are the buyer, this includes seeking a property to purchase at an acceptable price, terms and conditions, and assisting in the negotiation thereof; and, when appropriate, advising you to obtain professional inspections of the property, or to seek appropriate tax, legal and other professional advice or counsel.
- ✓ To maintain the confidentiality of specific client information, including bargaining information, even after the representation has ended.

LIMITED DUAL AGENCY

At the time you enter an agreement for Agency Representation, you may be asked to give written consent allowing the brokerage to represent both you and the other party in a transaction. This "dual agency" situation can arise when, for example, the brokerage that represents you, the seller, also represents buyers who may be interested in purchasing your property. When this occurs, it is necessary that the brokerage's representation duties be "limited" because a buyer and seller have built-in conflicts of interest. Most significantly, the buyer typically wants the property at the lowest price, while the seller wants top dollar. As a "limited dual agent," the brokerage and its licensee cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning price negotiations, terms or factors motivating the client/buyer to buy or the client/seller to sell. However, the brokerage must otherwise promote the best interests of both parties, perform the terms of the written representation agreement with skill and care, and perform all other duties required by law.

Buyers and sellers alike often find it desirable to consent to limited dual agency: buyers do not want the brokerage to be restricted in the search for suitable properties, and sellers do not want the brokerage to be restricted in the search for suitable buyers. Thus, when all parties agree in writing, a brokerage may legally represent both the buyer and the seller in the same transaction, but only as a "limited dual agent."

LIMITED DUAL AGENCY

In some situations, a brokerage that has obtained consent to represent both parties as a limited dual agent may assign individual licensees ("sales associates") to act solely on behalf of each party. (The brokerage must have an office policy that ensures client confidences are protected.) Where this is the case, the sales associate, or "assigned agent," is not limited by the brokerage's agency relationship with the other party, but instead has a duty to promote the best interest of the client that he or she is assigned to represent, including negotiating a price. The designated broker (the licensee who supervises the sales associates in the brokerage firm) remains a limited dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

RECEIPT ACKNOWLEDGED

Your signature below indicates only the receipt of the Idaho Real Estate Commission's brochure titled "Agency Law in Idaho." Each brokerage must keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure. §54-2083

Signature

Date

Signature

Date

Jun. 12, 2008 7:51PM

Exit Realty Destinations

Fax: 2086470881

2086470 No. 1509

P. 12

Jul 26 2007 12:19

P.02

ALTA Commitment (8/17/02)

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by

stewart
title guaranty company

Stewart Title Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, contracts to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.


Chairman of the Board

stewart
title guaranty company




President

Countersigned:


Authorized Countersignature

Northern Title Co. of Idaho
Company Name

Proctor, ID
City, State

004-UN ALTA Commitment (8/17/02)

File No.: NTA-1183

000164

Appd Pmtf Motn Reconsider 372

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereto, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereto, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at: <http://www.sta.org/>.



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

Jun. 12. 2008 7:52PM

Exit Realty Destinations

Fax: 2088470881

205847 No. 1509

P. 142

Jul 26 2007 12:19

P.04

Closing/Escrow inquiries to:
LOUI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA BAIED,
TITLE OFFICER

SCHEDULE A

Order No. NTHL-1163

1. Effective Date: May 30, 2007 @ 5:00 PM
2. Policy or policies to be issued:

A. ALTA Owner's (6/17/06)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount: \$200,000.00

Premium: \$2,350.00

B. ALTA Loan (6/17/06)

Coverage

Proposed Insured:

Amount: \$0.00

Premium: \$0.00

C. Endorsements: \$0.00

3. The estate or interest in the land described in the Commitment and covered herein is:
FEE SIMPLE

4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L.
STEPHENS FAMILY TRUST

5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is
described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS: BEAR LAKE COUNTY

000166

Affid Plntf motn Reconsider 374

"EXHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 86 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS; THENCE SOUTH 80 RODS; THENCE WEST 2550 FEET; THENCE SOUTH 15° EAST 932 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 216 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.15 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 5.57 CHAINS; THENCE SOUTH 75° WEST 44.61 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.34 CHAINS; THENCE NORTH 75° EAST 52.58 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 25 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 97 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 20 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 898 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 216 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Jun. 12. 2008 7:52PM

Exit Realty Destinations

Fax: 2088470881

20864732 No. 1509

Jul 28 2007 12:19

P. 16 P. 05

"EXHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 68 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 15° 45' EAST 1.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 25 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 89 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 30 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 1 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 74° WEST 175 FEET; THENCE SOUTH 25° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 388 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

000168

Appd Plntf Motn Reconsider 376

SCHEDULE B - SECTION II

Order No. NTBL-1123

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or arising subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.*
- (2) Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.*
- (3) Easements, claims of easement or encumbrances which are not shown by the public records.*
- (4) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.*
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.*
- (6) Any liens, or rights to a lien, for services, labor or material thereon or hereafter furnished, imposed by law and not shown by public records.*

*Paragraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section II.

(See Special exceptions beginning on the next page)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS:

1. Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$183.54.
Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$1,134.06.
Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$135.14.
Tax Serial No. 3168
2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL BASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
5. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 50

| | |
|-----------------|--------------------|
| RECORDED: | MAY 22, 1956 |
| INSTRUMENT NO.: | 71884 |
| RECORDED: | AUGUST 1, 1956 |
| INSTRUMENT NO.: | 72172 |
| RECORDED: | SEPTEMBER 20, 1956 |
| INSTRUMENT NO.: | 72343 |
| RECORDED: | NOVEMBER 15, 1960 |
| INSTRUMENT NO.: | 79210 |

(Continued)

Jun. 12. 2008 7:53PM

Exit Reply Destinations

2008-7 No. 1509

P. 1907-10

Fax: 2088470881

Jul 26 2007 12:19

P. 08

SCHEDULE B - SECTION II

Order No. NYBL-1183

SPECIAL EXCEPTIONS CONTINUED:

7. An Easement for the purpose shown below and rights incidental thereto as set forth in a document

Granted to: UTAH POWER AND LIGHT COMPANY
Purpose: Public Utilities Easement
Dated: SEPTEMBER 3, 1957
Recorded: FEBRUARY 28, 1958
Entry No.: 74457 & 74438

8. RIGHT OF WAY OPTION

RECORDED: AUGUST 21, 1973
INSTRUMENT NO.: 101374

9. OIL AND GAS LEASE

RECORDED: FEBRUARY 11, 1976
INSTRUMENT NO.: 107445

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: JULY 9, 1976
INSTRUMENT NO.: 108991

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: JUNE 24, 1977
INSTRUMENT NO.: 112523

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED: JULY 18, 1977
INSTRUMENT NO.: 112668

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: DECEMBER 9, 1977
INSTRUMENT NO.: 113901

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: DECEMBER 22, 1977
INSTRUMENT NO.: 114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: AUGUST 13, 1980
INSTRUMENT NO.: 122412

(Continued)

000171

APPD Pintt Motu Reconsider

379

Jun. 12. 2008 7:53PM

Exit Realty Destinations

Fax: 2088470881

Doc No. 1509 P. 20
Jul 28 2007 12:19 P.09

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124283

ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124284

10. RIGHT OF WAY EASEMENT

RECORDED: MAY 26, 1914
INSTRUMENT NO.: 10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

RECORDED: MARCH 7, 1997
INSTRUMENT NO.: 165238

NOTE: The policy of this insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its insurance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC.
ROGER L. STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction fails to close, a cancellation fee may be charged for services rendered in accordance with the rules that are on file with the Commissioner of Insurance of the State of Idaho.

Barbara Baud
Examiner

000172

Appd PInts motn Reconsider

380

Jun. 12. 2007 7:54PM

Exit Realty Destinations

2086470881 No. 1509

P. 21

Fax: 2086470881

Jul 26 2007 12:19

P. 10

NTBL-1182

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B-SECTION 1 REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

- (a) Payment to or for the account of the grantors or mortgagees of the full consideration for the estate or interest to insured.
- (b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the issuance of any policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any items herein below.

In addition to the foregoing, the following requirements must be complied with, to-wit:

1. PURCHASE AND SALE AGREEMENT.
2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
5. THREE BAR RANCHES, INC. NEEDS TO RENEW ARTICLES OF INCORPORATION WITH THE STATE OF UTAH.

000173

Att'd Plntf motn Reconsider 381

No. 1509 P. 22

Exit Realty Destinations

Jun. 12. 2008 7:56PM

STEVEN B CUMMINGS 01-07
1628 E GREENFIELD AVE 801-598-6380
SALT LAKE CITY, UT 84121

Date 7-24-07

7214

Pay to the
Order of

Exit Realty

\$ 3000.00

THREE THOUSAND DOLLARS

Dollars

ZIONS BANK

American Fork Office Inside Smith's
240 North West State Road
www.zionsbank.com

For Ernest Mark Skinner

⑆ 124000054⑆ 563 34027 21⑆ 2214



Evan Skinner
196 S 4th St.
Montpelier, ID 83254

PODATELLS TO 832

16 AUG 2007 PM 1 Y



STEVEN Cummings
43 N. 100 E

American Fork ut. 84003

84003+1732

Barcode

000174

382
Reconsider
motn
plntf
neat

NICK L. NIELSON - Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Avenue, Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE
MAGISTRATE DIVISION

PHILL BAUM, CURTIS BAUM, LYNN
BAUM, AND TINA PRESTON,

Plaintiffs,

vs.

EVAN SKINNER, JOLAINE SKINNER,
AMELIA WEST, PAM JACKSON, RYAN
OLSEN, DENISE SKINNER, TERRELL
SKINNER, EXIT REALTY OF BEAR LAKE,
HENRY P. SCHMIDT, ROGER BOEHME,
LEONARD POVEY, LORRAINE POVEY,
R. ALSON HEDDON, TRAILS WEST
REALTY, and JOHN DOES I-X,

Defendants.

CASE NO: CV-2007-218

RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND PLAINTIFFS'
MOTION FOR DISMISSAL OF
ACTION

Plaintiffs, by and through their attorney of record, Nick L. Nielson, hereby responds to Defendants' Motion for Summary Judgment, moves the Court to dismiss their causes of action without prejudice pursuant I.R.C.P. 41(a)(2), and further requests that the parties bear their own fees and costs.

RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTION FOR DISMISSAL OF
ACTION PAGE 1

Appd Plntff motn Reconsider 383

000175

NICK L. NIELSON - Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Avenue, Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE
MAGISTRATE DIVISION

PHILL BAUM, CURTIS BAUM, LYNN
BAUM, AND TINA PRESTON,

Plaintiffs,

vs.

EVAN SKINNER, JOLAINE SKINNER,
AMELIA WEST, PAM JACKSON, RYAN
OLSEN, DENISE SKINNER, TERRELL
SKINNER, EXIT REALTY OF BEAR LAKE,
HENRY P. SCHMIDT, ROGER BOEHME,
LEONARD POVEY, LORRAINE POVEY,
R. ALSON HEBDON, TRAILS WEST
REALTY, and JOHN DOES I-X,

Defendants.

CASE NO: CV-2007-218

RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND PLAINTIFFS'
MOTION FOR DISMISSAL OF
ACTION

Plaintiffs, by and through their attorney of record, Nick L. Nielson, hereby responds to Defendants' Motion for Summary Judgment, moves the Court to dismiss their causes of action without prejudice pursuant I.R.C.P. 41(a)(2), and further requests that the parties bear their own fees and costs.

RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTION FOR DISMISSAL OF ACTION
PAGE 1

Appd Plntff motn Reconsider 384

Defendants have sought summary judgment on the grounds that none of the plaintiffs were parties to any of the real estate agreements set forth in Plaintiff's Complaint Motion for Summary Judgment, p. 2. In this action, the individual plaintiffs have interests in the properties addressed in the Complaint. However, in the interests of justice, Plaintiffs request the Court to dismiss their action without prejudice so that they may better delineate all claims and all parties associated with each and every claim.

In *Scona, Inc. v. Green Willow Trust*, 133 Idaho 283, 288, 985 P.2d 1145, 1150 (1999) the Idaho Supreme Court reviewed I.R.C.P. 17(a) which requires that actions be prosecuted only in the name of the real party in interest. Citing *Carrington v. Grandall*, 63 Idaho 651, 658, 124 P.2d 914, 917 (1942), the Scona Court stated that a real party in interest "is the person who will be entitled to the benefits of the action if successful." *Id.*

The individual Plaintiffs did obtain Assignments of Contract to Purchase Real Estate from the companies listed on the real estate purchase and sale agreements for some of the properties at issue in the Complaint. See Affidavit of Nick L. Nielson attached hereto and incorporated herein by reference. By virtue of the Assignments, the individual parties are real parties in interest and are entitled to the benefits of the action if successful. However, these Assignments were not referenced or made part of the Complaint and assignments were not made/cannot be located for all properties listed in the Complaint.

Additionally, there are some causes of action that pertain to individuals and some causes of action which pertain to the companies listed on the purchase and sale agreements. In the interests of justice, Plaintiffs seek dismissal of this action without prejudice in order to properly set forth their individual claims as well those of the companies

for which they are associated. Accordingly, Plaintiffs would also agree to have the notices of lis pendens filed in connection with the relevant properties dismissed.

The Motion to Continue filed by Plaintiffs and granted in this matter was not meant to prolong the issues of the case. The motion was intended to allow Plaintiffs newly retained counsel the opportunity to review Plaintiffs' claims and their documentation establishing interest in the real property in question. Now that counsel has reviewed necessary paperwork, it appears that all parties would best be served through the dismissal of this action and the filing of a new action. The Court has indicated that a new filing would be advised rather than amendment of the Complaint.

Defendants cannot be granted attorney fees on their unsupported rantings that this action was brought "groundless and frivolously." Motion for Summary Judgment, Attorney fees under I.C. §12-121 "may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation. *Bingham v. Montane Resource Associates*, 133 Idaho 420, 987 P.2d 1035 (1999). If there is a legitimate, triable issue of fact, attorney fees may not be awarded under I.C. §12-121. *Id. Nampa & Meridian Irrigation Dist. v. Washington Fed. Savings*, 135 Idaho 518, 524-525, 20 P.3d 702, 708-709 (2001).

Plaintiffs acknowledge that Idaho Code §12-120 provides for an award of attorney fees to the prevailing party in commercial transactions. I.C. §12-120(3). This section, however, does not apply to contracts for the purchase of real estate by individuals. *Cristo Viene Pentecostal Church v. Paz*, 2007 IDSCO 32280-052407. The Assignments indicate that certain properties were purchased for the benefit of individuals. To the extent that the

claims set forth in the Complaint pertain to property acquired by the individual Plaintiffs, and to the extent that the claims are tort based, (i.e. Plaintiffs' claims for slander, harassment, and intentional infliction of emotional distress), attorney fees cannot be awarded under §12-120(3).

In accordance with Rule 41(a)(2), this action may be dismissed upon the terms and conditions this Court deems proper. Plaintiffs are requesting dismissal of this action without prejudice and without fees and costs, so that they can make a good faith effort to refine their claims and properly present their causes of action before the Court. Such actions should assure that standing and jurisdiction are proper and that an efficient adjudication of all claims may be accomplished. Plaintiffs therefore respectfully request that their Motion for Dismissal be granted and that the parties bear their own fees and costs.

DATED this 27 day of December, 2007.

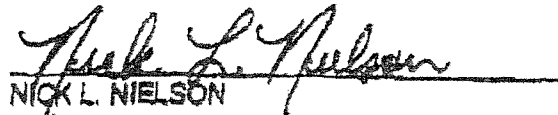

Nick L. Nielson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of December, 2007, I served a true and correct copy of the foregoing RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTION FOR DISMISSAL OF ACTION by causing a copy to be sent via facsimile and U.S. Mail, postage prepaid to:

Ronald S. George, P.A.
PO BOX 510
Pocatello, ID 83204

FAX: 232-9467


NICK L. NIELSON


RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTION FOR DISMISSAL OF ACTION
PAGE 4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of December, 2007, I served a true and correct copy of the foregoing **AFFIDAVIT OF NICK L. NIELSON** by causing a copy to be sent via facsimile and U.S. Mail, postage prepaid to:

Ronald S. George, P.A.
PO BOX 810
Pocatello, ID 83204

FAX: 232-0467


NICK L. NIELSON

EXAMPLE

QUITCLAIM DEED

ORDER NO.:

FOR VALUE RECEIVED, Steven B Cummings and Laura S Cummings, Husband and Wife

Do(es) hereby convey, release, remise and forever quit claim unto

JEB, DCB & SBC Family Second Trust

whose current address is: 43 North 100 East, American Fork, UT 84003

the following described premises:

North 32' x 120' East 708.00 feet along said right-of-way line to the point of beginning.

TO HAVE AND TO HOLD the said premises, unto the said grantees, heirs and assigns forever.

July 27, 2007

Steven B Cummings

Laura S Cummings

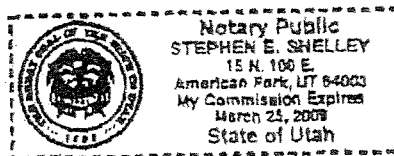
State of Utah

County of Utah

On this 27th day of July, in the year 2007 before me, a Notary Public in and for said state, personally appeared Steven B Cummings and Laura S Cummings known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

(IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for the State of
Residing at:
Commission Expires:



000181

APPd Plntf motu Reconsider

389

#26

Appd Plntff motn Reconsider 390



Nathan M. Olsen
2105 Coronado Street • Idaho Falls, ID

Phone (208) 557-5209 • Fax (208) 529-9732
Email nathan@beardstclair.com

Attorneys

September 28, 2010

Randall C. Budge
Mark Schaffer
Racine Olson Nye Budge & Bailey
PO Box 1391
Pocatello, ID 83204-1391

Brad H. Beamson
Beamson & Peck, L.C.
399 North Main, Ste 300
Logan, Utah 84321

Re: Cummings v. Stephens

Dear Counselors.

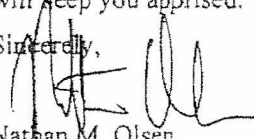
Please find enclosed the response to our subpoena to Exit Realty of Bear Lake.

You should note that the Three Bar Ranches purchase contract that was assigned to my client, as produced by Exit Realty, includes the addendum with the legal description with property on both sides of Highway 30. In addition, the title commitment that was provided to Mr. Cummings contains that same description. This is consistent with Mr. Cummings' testimony, and the faxes that he received from Exit Realty that were attached as exhibits 19 and 20 to his deposition.

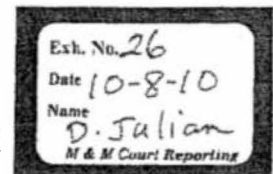
It is clear that the "addendum one" with the exclusionary language that was attached to exhibit 3 in the deposition was a fabrication and produced after the fact. As far as we can tell, this fabricated addendum first appeared as part of attachment 1 to your June 11 2008 letter to me (after we had notified you about the altered deed). The title commitment that has been produced by your clients with the legal description containing the exclusionary language is also highly suspect. Finally, the unsigned "addendum # 3" which you included as page 1 of exhibit 6 to Mr. Cummings deposition was first disclosed as an attachment to your June 11, 2008, letter. It is very apparent in comparing this document with the rest of the purchase agreement that it was not prepared until after the fact.

At this time, we are weighing our options about what to do with these troubling revelations, and will keep you apprised.

Sincerely,


Nathan M. Olsen

enclosures



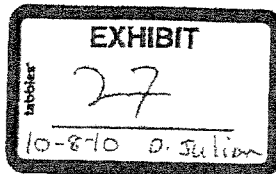
Attorneys licensed in Idaho Colorado Oregon Washington Wyoming

Winston V. Beard John C. St. Clair Michael D. Gaffney Harlow J. McNamara Gregory C. Calder Jarin O. Hamner Lance J. Schuster
Gordon S. Thatcher Jeffrey D. Brunson Stephen H. Telford Nathan M. Olsen John M. Avondet Julie Stomper Michael W. Brown Blair J. Grover
000182

Add Print motn Reconsider 391

#27

Attd Plntf motn Reconsider 392



RE-16 EXCLUSIVE SELLER REPRESENTATION AGREEMENT
THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU
HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



DATE 1-1-07 AGENT: Christy A. Sullivan - Seller
Acting as Agent for the Broker

1. SELLER Ryan Olsen Trustee et al.
retains Ryan Olsen Broker of Exit Realty of Bear Lake as

Exclusive SELLER'S Broker to sell, lease, or exchange the property described in Item #2 below during the term of this agreement and on any additional terms hereafter set forth.

2. PROPERTY ADDRESS AND LEGAL DESCRIPTION. The property address and the complete legal description of the property are as set forth below.

Address 33951
County Bear Lake City Grand Rapids Zip 83054
Legal Description _____

or ☒ Legal Description Attached as addendum # Exhibit 5 pages (Addendum must accompany original listing)

3. TERM OF AGREEMENT. The term of this Agreement shall commence on Jan 1, 07 and shall expire at 11:59 p.m. on Jan 1, 08 unless renewed or extended. If the SELLER accepts an offer to purchase or exchange, the terms of this Agreement shall be extended through the closing of the transaction.

4. PRICE. SELLER agrees to sell the property for a total price of \$ 800,000

5. FINANCING. SELLER agrees to consider the following types of financing: (Complete all applicable provisions).

☐ FHA ☐ VA ☒ CONVENTIONAL ☐ IHFA ☐ RURAL DEVELOPMENT ☐ Exchange
☒ Cash ☐ Cash to existing loan(s) ☐ Assumption of existing loan(s)
☐ SELLER will carry contract and accept a minimum down payment of \$ 7 and an acceptable secured note for the balance to be paid as follows: _____

Other acceptable terms _____

Brokers are required by Idaho Real Estate Law to present all written offers.

6. BROKERAGE FEE.

(A) If Broker or any person, including SELLER, procures a purchaser ready, willing and able to purchase, transfer or exchange the property on the terms stated herein or on any other price and terms agreed to in writing, the SELLER agrees to pay a total brokerage fee of 1% of the contract or purchase price OR \$ _____ of which _____ % of the contract or purchase price OR \$ _____ will be shared with the cooperating brokerage unless otherwise agreed to in writing. The fee shall be paid in cash at closing unless otherwise designated by the Broker in writing.

(B) Further, the brokerage fee is payable if the property or any portion thereof or any interest therein is, directly or indirectly, sold, exchanged or optioned or agreed to be sold, exchanged or optioned within 120 days following expiration of the term hereof to any person who has examined, been introduced to or been shown the property during the term hereof.

(C) If SELLER, upon termination of this Agreement, enters into an Exclusive Right to Sell Agreement to market said property with another Broker, then the time period specified above in Section 6B, shall not apply and will be of no further force or effect.

7. ADDITIONAL FEES: Transfer closing fees at title price

X SELLER'S Initials P.L. & B.L. Date 1-14-07 X

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED.
© Copyright, Idaho Association of REALTORS®, Inc.

PROPERTY ADDRESS: 23951 B-2 Hwy 90, 3 miles N. Granger, ID

8. INCLUDED ITEMS. SELLER agrees to leave with the premises all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, built in and "drop in" ranges (but excluding all other ranges), fuel tanks and irrigation fixtures and equipment, and any and all, if any, water and water rights, and any and all, if any, ditches and ditch rights appurtenant thereto that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein. Also included:

car, pool, kitchen stuff

9. EXCLUDED ITEMS. personal items in house

10. TITLE AND EXISTING ENCUMBRANCES. Title to the property is to be conveyed by Warranty Deed unless otherwise provided herein, and is to be marketable and insurable except for rights reserved in federal patents, federal, state or railroad deeds, building or use restrictions, building and/or zoning regulations and ordinances of any governmental entity, and rights of way and easements established or of record. The individual executing this Agreement warrants and represents that said individual either owns the property or has full power and right to enter into this Agreement and to sell and convey the property on behalf of the SELLER and that to the best of said individual's knowledge the property is in compliance with all applicable building and zoning regulations and with any applicable covenants and restrictions affecting the property except:

N.A.

The SELLER agrees to provide good and marketable title to the property at the time of closing. The property is currently encumbered by the following liens:

☐ 1st Mortgage ☐ 2nd Mortgage ☐ Home Equity Loan ☐ Other

☒ The property is not encumbered by any mortgage, lien, or other security instrument.

Loan payments ☐ are ☐ are not current loan ☐ is ☐ is not assumable. If loan is assumable, Buyer ☐ will ☐ will not be required to qualify and ☐ will ☐ will not release SELLER'S liability.

SELLER is aware that some loans have a recapture provision or prepayment penalty and SELLER may be required to pay additional funds to satisfy such recapture or penalty.

11. MULTIPLE LISTING SERVICE AUTHORIZATION. (Name of MLS) Wootch

SELLER By initialing this line, it is understood that Broker is a member of the above MLS. SELLER authorizes and directs Broker to offer to cooperate with and compensate other Brokers, and to submit a Property Data Sheet and any authorized changes to MLS as required in the Rules and Regulations of the above MLS. SELLER understands and agrees that any MLS information regarding the above property will be made available to Buyer's Agents and/or Dual Agents. SELLER acknowledges that it has been explained that any sales price information compiled as a result of this Agreement may be provided to the County Assessor's office. SELLER agrees that any such disclosure is permissible.

12. LOCKBOX AUTHORIZATION.

SELLER By initialing this line, SELLER directs that a lockbox containing a key which gives MLS Keyholders access to the property shall be placed on any building located on the property. SELLER authorizes MLS Keyholders to enter said property to inspect or show the same. SELLER agrees to hold Broker harmless from any liability or loss.

13. ADVERTISING AUTHORIZATION.

SELLER ☒ does ☐ does not agree to allow Broker to advertise said property in print media.

SELLER ☒ does ☐ does not agree to allow Broker to advertise said property in internet advertising media.

SELLER ☒ does ☐ does not agree to allow Broker to advertise said property in other advertising media.

SELLER ☒ does ☐ does not agree to allow Broker to place the Broker's sign on above property.

14. SELLER'S PROPERTY DISCLOSURE FORM. If required by Title 55, Chapter 25 Idaho Code, SELLER shall within ten (10) days after execution of a Purchase and Sale Agreement provide to Buyer "SELLER'S Property Disclosure Form" and Buyer shall have three (3) business days from receipt of the disclosure report to rescind the offer in a written signed and dated document delivered to the SELLER or the SELLER'S Agents. Buyer rescission must be based on a specific written objection to a disclosure made in the SELLER'S Property Disclosure Form.

X SELLER'S Initials (RLL) (BLS) 1-19-07 Date X

PROPERTY ADDRESS: 23951 U.S. Highway 30 - 3 miles N. of Mountain View

15. LEAD BASED PAINT DISCLOSURE. SELLER has been advised of disclosure obligations regarding lead-based paint and lead-based paint hazards in the event property is a defined "Target Housing" under Federal Regulations. Said property ☐ is ☐ is not "Target Housing". If yes, SELLER agrees to sign and complete the Information Disclosure and Acknowledgment Form provided to me and deliver to my agent all records, test reports or other information related to the presence of lead-based paint or lead-based paint hazards, if any. *properly remediated in 1992*

16. TRANSACTION RELATED SERVICES DISCLAIMER: SELLER understands that Broker is qualified to advise SELLER on general matters concerning real estate, but is not an expert in matters of law, tax, financing, surveying, structural conditions, property inspections, hazardous materials, or engineering. SELLER acknowledges that Broker advises SELLER to seek expert assistance for advice on such matters. The Broker or Broker's agents may, during the course of the transaction, identify individuals or entities who perform services including BUT NOT LIMITED TO the following: home inspections, service contracts, appraisals, environmental assessment inspection, code compliance inspection, title insurance, closing and escrow services, loans and refinancing services, construction and repair, legal and accounting services, and/or surveys. The SELLER understands that the identification of service providers is solely for SELLER'S convenience and that the Broker or their agents is not guaranteeing or assuring that the service provider will perform its duties in accordance with the SELLER'S expectations. SELLER has the right to make arrangements with any entity SELLER chooses to provide these services. SELLER hereby releases and holds harmless the Broker and Broker's agents from any claims by the SELLER that service providers breached their agreement, were negligent, misrepresented information, or otherwise failed to perform in accordance with the SELLER'S expectations. In the event the SELLER requests Broker to obtain any products or services from outside sources, SELLER agrees to pay for them immediately when payment is due. For example, surveys or engineering, environmental and/or soil tests, title reports, home or property inspections, appraisals, etc.

17. CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY: The undersigned SELLER(S) have received, read and understand the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned SELLER(S) understand that the brokerage involved in this transaction may be providing agency representation to both the SELLER(S) and the Buyer. The undersigned SELLER(S) each understands that, as an agent for both SELLER/client and Buyer/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the Buyer/client to buy or the SELLER/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2085, Idaho Code. The undersigned SELLER(S) each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned SELLER(S) further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship. SELLER ☒ does ☐ does not consent to allow Buyer's Agents and/or Limited Dual Agents to show property and to allow the Broker to share brokerage fees as determined by the Broker with Buyer's Agents and/or Limited Dual Agents.

18. SELLER NOTIFICATION AND CONSENT TO RELEASE FROM CONFLICTING AGENCY DUTIES: SELLER acknowledges that Broker as named above has disclosed the fact that at times Broker acts as agent(s) for other Buyers and for SELLERS in the sale of the property. SELLER has been advised and understands that it may create a conflict of interest for Broker to introduce Buyers to SELLER Client's property because Broker could not satisfy all of its Client duties to both Buyer Client and SELLER Client in connection with such a showing or any transaction which resulted

Based on the understandings acknowledged, SELLER makes the following election: (Make one selection only)

☒ Initials
Limited Dual
Agency and/or
Assigned Agency

OR

Initials
Single Agency

SELLER does want Broker to introduce any interested Client of Broker to Client SELLER'S property and hereby agrees to relieve Broker of conflicting agency duties, including the duty to disclose confidential information known to the Broker at that time and the duty of loyalty to either party. Relieved of all conflicting agency duties, Broker will act in an unbiased manner to assist the SELLER and Buyer in the introduction of Buyers to such SELLER Client's property and in the preparation of any contract of sale which may result SELLER authorizes Broker to act in a limited dual agency capacity. Further, SELLER agrees that Broker may offer, but is not obligated to offer, assigned agency representation, and if offered by the Broker, SELLER authorizes Broker to act in such capacity.

SELLER does not want Broker to introduce interested Buyer Clients to Client SELLER'S property and hereby releases Broker from any responsibility or duty under the agency agreement to do so. Broker shall be under no obligation or duty to introduce the Buyer to any Client SELLER'S property.

☒ SELLER'S Initials (RLL) (BLL) 1-19-07 Date ☒

PROPERTY ADDRESS: 23951 N. S. Hwy 90 - 3 miles N of Montpelier

19. INFORMATION WARRANTY. SELLER warrants that all information provided by the SELLER herein and hereafter will be true and correct.

20. DEPOSIT. Brokers are authorized to receive a deposit from any prospective purchaser who offers to purchase or exchange the property and shall notify SELLER of the receipt of any such deposit. Acceptance of such deposit by a Broker shall not constitute SELLER'S acceptance of any such offer.

21. GENERAL PROVISIONS. In the event either party shall initiate any suit or action or appeal on any matter relating to this Agreement the defaulting party shall pay the prevailing party all damages and expenses resulting from the default, including all reasonable attorneys' fees and all court costs and other expenses incurred by the prevailing party. This Agreement is made in accordance with and shall be interpreted and governed by the laws of the State of Idaho. All rights and obligations of the parties hereunder shall be binding upon and inure to the benefit of their heirs, personal representatives, successors and assigns.

22. NON-DISCRIMINATION. SELLER and Broker acknowledge that it is illegal to discriminate in the showing, sale or leasing of the property on the basis of race, religion, creed, color, sex, marital status, national origin, familial, or handicapped status of such person.

23. SINGULAR AND PLURAL terms each include the other, when appropriate.

24. FACSIMILE TRANSMISSION. Facsimile or electronic transmission of any signed original document and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

25. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

26. OTHER TERMS AND CONDITIONS:

CONTRACTOR REGISTRATION # (if applicable)

☒ Seller Signature: Roger L. Stephens

Accepted: [Signature]
(Broker)

☒ Seller Signature: Richard A. Stephens

By: [Signature]
(Agent)

☒ Date: 19 June 2007

Date: 6-19-07

☒ Address: Richard A. Stephens

Address: 196 South 4th Street

☒ City: Providence State: RI Zip: 02932

City: Montpelier State: Id Zip: 83254

☒ E-Mail: Direct 436 W. Corporation Dr -

E-Mail: sklev1@gmail.com

☒ Phone(s): 435-752-5292

Phone(s): 208-847-EVAN or 208-847-3200

☒ Fax:

Fax: 208-847-3203

THE PROVISIONS CONTAINED ON PAGES ONE, TWO AND THREE SHALL ALSO CONSTITUTE PART OF THE AGREEMENT OF THE PARTIES EACH OF THE PARTIES ACKNOWLEDGES READING THIS AGREEMENT IN FULL

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED.
© Copyright Idaho Association of REALTORS®, Inc.

APP Pmtf Motn Reconsider

396

22822-1000 I
5 pages

153955

WARRANTY DEED

FOR VALUE RECEIVED, ROGER L. STEPHENS and BARBARA L. STEPHENS, husband and wife, of 176 West 600 North, Logan, Utah 84321 (hereinafter "Grantor"), do hereby grant, bargain, sell and convey unto THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST, in care of Roger L. Stephens and Barbara L. Stephens, Trustees, whose current address is 176 West 600 North, Logan, Utah (hereinafter "Grantee"), their heirs and assigns forever, the following described premises in Bear Lake County, Idaho, to-wit:

PARCEL A: Beginning at the Southwest Corner of the Southeast Quarter of the Northwest Quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, running thence North 80 rods; thence East 62.5 rods; thence North 80 rods; thence East 257.5 rods, thence South 80 rods; thence West 2530 feet; thence South 15° East 952 feet; thence South 75°30' West 318 feet; thence North 15° West 218 feet; thence South 75°30' West 2764 feet; thence North 164 feet to the place of beginning.

PARCEL B: Beginning at the Southeast Corner of the Southwest Quarter of the Northwest Quarter of Section 22, Township 12 South, Range 44 East of the Boise Meridian, running thence North 205 feet; thence South 75° West to a point 11.16 chains East of the Southwest Corner of the Northwest Quarter of said Section 22; thence East 8.84 chains to the point of beginning.

PARCEL C: The Southeast Quarter of the Northwest Quarter of Section 22, Township 12 South, Range 44 East of the Boise Meridian, EXCEPT Road Right-of-Way deeded to Isaac Christofferson and recorded on Book 23, page 395.

PARCEL D: Commencing at a point 11.16 chains East from the Northeast Corner of the Southeast Quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, running thence East 3.90 chains; thence South 13°45' East 8.87 chains; thence South 75° West 44.63 chains; thence North 89°55' West 13.66 chains; thence North 30° West 6.54 chains; thence North 75° East 52.50 chains to the place of beginning.

PARCEL E: Beginning at the Northwest Corner of the Southeast Quarter of the Southwest Quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, running thence East 34.17 chains; thence South 76°15'

153955

West 35.30 chains; thence North 9.12 chains, more or less, to the place of beginning.

PARCEL F: Commencing at a point 28 rods, more or less, North and 11 rods, more or less, East of the Southwest Corner of the Southwest Quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, running thence Northeasterly 69 rods, more or less, to 40 acre line; thence North 39 rods, more or less, to 40 acre line; thence East along said line 80 rods; thence North along 40 acre line 27 rods; thence Southwesterly 112 rods and 8 links to the land of George Perkins; thence Southwesterly along the line to the place of beginning.

PARCEL G: The South Half of Section 29, Township 12 South, Range 44 East of the Boise Meridian. EXCEPT that portion lying East of the Railroad.

Township 12 South, Range 44 East of the Boise Meridian:

Section 21: The North Half of the Northeast Quarter.
Section 22: The Northwest Quarter of the Northwest Quarter.

All of that portion of the following described land lying Easterly of U.S. Highway 30 North, as presently located (disclosed by instrument recorded under recorder's file number 71884 and recorded in Book 45 of Deeds at page 614 in the records of Bear Lake County, Idaho):

Beginning at a point 11.16 chains East of the Southeast corner of the Northeast Quarter of Section 21, Township 12 South, Range 44 East, Boise Meridian in Idaho; running thence South 75 degrees West to U.S. Highway (old); thence North 15 degrees West following Highway (old) to the North line of the Southeast Quarter of the Northeast Quarter of said Section 21; thence East to the Northeast corner of the Southwest Quarter of the Northwest Quarter of Section 22, same township and range; thence South 80 rods; thence West 8.84 chains more or less to the place of beginning and containing approximately 68 acres be the same more or less.

Beginning at the Southwest corner of the Southeast Quarter of the Northwest Quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, and running thence West 1239 feet; thence South 34 degrees West 175 feet; thence South 35 degrees 30 minutes East 1494 feet; thence North 75 degrees East 3851 feet more or

153955

less to the West line of U.S. Highway 30 North right-of-way; thence North 15 degrees West along said right of way 888 feet; thence South 75 degrees 30 minutes West 318 feet; thence North 15 degrees West 218 feet; thence South 75 degrees 30 minutes West 2764 feet; thence North 164 feet to the place of beginning.

Together with all oil, gas and mineral rights appurtenant thereto.

Also together with all water rights appurtenant thereto, and also all Grantors' rights and/or shares in the Bennington Irrigation Company.

A perpetual easement or right of way over a strip of land 20 feet in width leading from the county road to the following described real property:

The Southeast quarter of the Northwest Quarter of Section 22 in Township 12 South of Range 44 East of the Boise Meridian, containing 40 acres more or less.

And running through a part of the Southeast Quarter of the Northeast Quarter of Section 21 and the Southwest Quarter of the Northwest Quarter of Section 22, Township 12 South of Range 44 East of the Boise Meridian.

THE FOLLOWING DESCRIBED TWO PARCELS ARE EXCEPTED AND EXCLUDED FROM THE ABOVE-DESCRIBED PROPERTY, TO-WIT:

PARCEL 1: A parcel of land in the Southwest Quarter of Section 22 and the Southeast Quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, and further described as follows:

Beginning at a point which is North 5°13'24" West 1715.82 feet from the Southeast Corner of said Section 21, and said point being in the East right of way fence of State Highway 30 North; thence North 25°20'32" West 668.06 feet along said East right of way fence to a 1/2 inch steel pin; thence North 76°05'56" East 1309.14 feet to a 1/2 inch steel pin; thence South 88°56'40" East 183.24 feet to a 1/2 inch steel pin; thence South 11°12'27" East 604.17 feet to a 1/2 inch steel pin; thence South 75°55'34" West 1325.26 feet to the Point of Beginning.

PARCEL 2: A parcel of land located in the Southeast Quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, and further described as follows:

153955

Beginning at a point which is North 16°44'17" West 1696.99 feet from the Southeast Corner of said Section 21, said point being in the East right of way fence of 8th Street; thence North 11°39'28" West 566.42 feet to a 1/2 inch steel pin; thence North 77°39'54" East 105.07 feet to a point in the West right of way fence of Highway 30 North; thence South 25°21'34" East 573.94 feet along said West right of way fence; thence South 75°49'48" West 221.45 feet along an existing fence to the Point of Beginning.

TO HAVE AND TO HOLD the said premises, with their appurtenances, including all gas, oil and mineral rights.

Grantor does hereby covenants that they are the owner in fee simple of said premises that they are free from all encumbrances excepting other easements of record, conflicts in boundary lines, shortage in area, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records, and that they will warrant and defend the same from all lawful claims.

DATED this 14th day of February, 1992.


ROGER L. STEPHENS


BARBARA L. STEPHENS

- 4 -

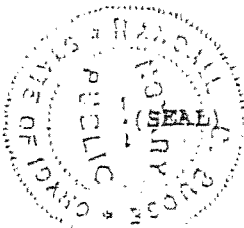
000190

Affd Plntf motn Reconsider 400

STATE OF IDAHO)
 : ss
County of Bannock)

On this 14th day of February, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared ROGER L. STEPHENS and BARBARA L. STEPHENS, husband and wife, known to me to be the persons whose names are subscribed to the foregoing and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Ruddell C. Bridge
NOTARY PUBLIC FOR IDAHO
Residing at Pocatello
My Commission expires: 10/11/94

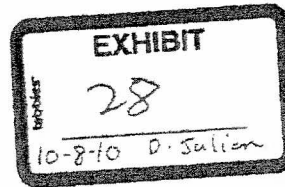
BEAR LAKE COUNTY RECORDER
JOAN P. EBORN
1992 FEB 26 PM 2 16
DEPUTY FEE 15.00

153955

#28

Appd Plntf Motn Reconsider

402



196 South 4th St.
Montpelier, Idaho 83254

208-847-3200
208-709-1534

June 18, 2008

To Whom It May Concern:

Mr. Steven Cummings called at my home approximately the end of July, 2007. As the listing agent of the subject property, I had my home phone listed on the name sign "Call Dot Julian - 847-1535". Mr. Cummings had been driving around and saw the sign by the house. The home is a very attractive flagstone house. I told him the ranch surrounding the house was approximately 278 acres and their property lies west of the highway, running in front of the house, and it includes all barns and sheds, 900 water shares of Bennington gravity flow water and 100 water shares of Montpelier water.

I told Mr. Cummings that the property had been reduced to \$800,000. The property had been leased by the Phelps Brothers from Bennington and was under lease at this time. I also told him that there was an offer on the property at this time but of course anyone with any interest should consider a backup offer.

I told him he could contact Evan Skinner, as agent at our real estate office, who would be glad to show him all around the property in his truck. My truck was not available at this time. Evan has always been very helpful to me by showing property that you best not show with your car.

This is my statement.

A handwritten signature in cursive script that reads "Dorothy Julian-Ralls".

Dorothy Julian-Ralls
Associate Broker, Recreation Realty

000192

Affd Plntff motn Reconsider 403

#29

Affidavit Plaintiff Motion Reconsider 404

EXHIBIT

29
10-8-10 D. Julian

June 13, 2008

Dear Sirs,

In the summer of 2007, Dot Julian received a call from Steve Cummings. He wanted to look at some properties. She asked me to help her show this gentleman some land. Mr. Cummings followed me in his motor home to see several properties. When I took him to see the Roger Stephen's Property, I drove there on North 8th Street. This street is already west of the highway. I showed Mr. Cummings where the land started from North 8th Street. From there, we went to the main residence on the property and he and his family went inside to look. I explained that this property was under contract but the buyer may be willing to sell his position if he could make more than what he was going to have to pay for it. I told Mr. Cummings that the Ranch was approximately 270 acres but that was only an approximate and that we got our information from the County records. I also told him that the land had not been surveyed. I told him that this Ranch had been part of a larger tract of land but the owner had given the East side of Hwy 30 to his son and that part was not for sale. Mr. Cummings was told several times and on more than one occasion that the land for sale was only the land on the West side of Hwy 30. He was shown in person and on a map that there was approximately 270 acres and it was the land on the WEST SIDE of Hwy 30 only. He was told that if he decided to purchase the property that we would have to get the first buyer to assign his interest over to him as the second buyer.

After I talked to the first buyer and he agreed to sell his interest for a profit of \$50,000.00, We talked to Mr. Cummings again. Dorothy Julian was the person that contacted him. Mr. Cummings agreed to these terms. Nothing was said about "Flying J Heirs". That is a total fabrication. I was up front with Mr. Cumming, the first buyer and the seller about what the agreements were. I even gave Mr.

000193

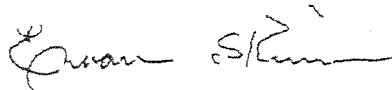
Affd Plntf Motn Reconsider 405

Cummings a copy of the agreement to purchase the property from the first buyer. Everything was disclosed. Every party to the agreements had full disclosure to all aspects of this transaction. The owner of the property, Mr. Stephens, showed Mr. Cummings around the property and gave him details about watering and caring for the land. There could have been no question about the acreage at that point.

Mr. Cummings signed a "BUYER DUE DILIGENCE CHECKLIST" that states: "If the square footage or acreage of the Property is of material concern to Buyer, Buyer is advised to verify the square footage or acreage through any independent sources or means deemed appropriate by Buyer. In the event that the Company provides any numerical statements regarding these items, such statements are approximations only. Buyer is advised not to rely on seller, the Company, or any agents of the Company for a determination regarding the square footage or acreage of the Property."

Dorothy Julian has discussed this matter with me and she agrees that this was how things happened. We had no idea until a year later that Mr. Cummings was having any dispute over this matter. I have sold Ranches in the Bear Lake Valley for 14 years and I have lived here all of my life. I know these Ranches inside and out. I am not guessing when I tell client information about boundaries. I would have no reason to tell Mr. Cummings that property not even owned by the seller at this time was for sale. This Ranch was an excellent buy with the approximate 270 acres that Mr. Cummings got. In fact, we have people looking for property to buy right now at the price Mr. Cummings paid. This dispute is a surprise and a disappointment to our office. We thought that Mr. Cummings was a satisfied buyer up until a few weeks ago.

Evan Skinner
Recreation Realty



6-16-03

000194

Affd Plntf Motn Reconsider 406

Lori

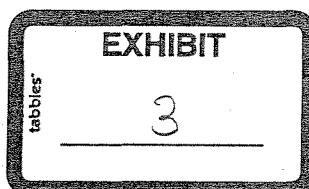
From: Jay Davis [jay@northerntitle.net]
Sent: Wednesday, June 18, 2008 4:45 AM
To: 'Lori'; 'Paul Davis'
Subject: Cummings letter
Attachments: Cummings letter.doc

Lori,
Attached is a letter responding to the claims made by Steven Cummings.
I need:

1. A signed copy of Addendum #3.... this is the most important because without I don't see that have anything in writing from Mr. Cummings to change the legal from the way it was attached to the REPC.
2. An affidavit signed by the realtors that they made it clear to mr. cummings that he wasn't to receive any property east of highway 30.

Please review the letter and let know if I need to change anything.... I'd love to attach executed copies of both of the above listed items.

Thanks
J



Add Plntf Motn Reconsider

6/23/2008

407

Fax: 2088470881

Jul 26 2007 12:19

P. 05

"EXHIBIT A"*Addendum One*

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS; THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

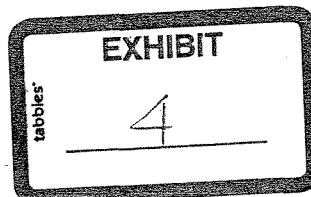
COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 2.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 89 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 99 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1219 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Initial*Appd Plntff Motn Reconsider**408*

"EXHIBIT A"

Addendum 014

PARCEL A
BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST
QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE
COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS, THENCE EAST 62.5 RODS, THENCE NORTH 80
RODS, THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS, THENCE WEST 2530 FEET, THENCE SOUTH
15° EAST 952 FEET, THENCE SOUTH 75° 30' WEST 318 FEET, THENCE NORTH 15° WEST 218 FEET,
THENCE SOUTH 75° 30' WEST 2764 FEET, THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S.
HIGHWAY 30.

PARCEL D
COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST
QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE
COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS, THENCE SOUTH 13° 45' EAST 8.87 CHAINS,
THENCE SOUTH 75° WEST 44.63 CHAINS, THENCE NORTH 89° 55' WEST 13.66 CHAINS, THENCE NORTH
30° WEST 6.54 CHAINS, THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

PARCEL E
BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST
QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE
COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS, THENCE SOUTH 76° 15' WEST 35.50 CHAINS,
THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL F
COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF
THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH,
RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE
NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE, THENCE NORTH 39 RODS, MORE OR
LESS, TO 40 ACRE LINE, THENCE EAST ALONG SAID LINE 80 RODS, THENCE NORTH ALONG 40 ACRE
LINE 27 RODS, THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS,
THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL I
BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST
QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE
COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET, THENCE SOUTH 34° WEST 175 FEET,
THENCE SOUTH 35° 30' EAST 1494 FEET, THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE
WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY, THENCE NORTH 15° WEST ALONG SAID
RIGHT OF WAY 888 FEET, THENCE SOUTH 75° 30' WEST 318 FEET, THENCE NORTH 15° WEST 218 FEET,
THENCE SOUTH 75° 30' WEST 2764 FEET, THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING
FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF
RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO,
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF
SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Add Print Motu Reconsider

409



Nathan M. Olsen

2105 Coronado Street • Idaho Falls, ID

Phone (208) 557-5209 • Fax (208) 529-9732

Email nathan@beardstclair.com

Attorneys

September 28, 2010

Randall C. Budge

Mark Schaffer

Racine Olson Nye Budge & Bailey

PO Box 1391

Pocatello, ID 83204-1391

Brad H. Bearnson

Bearnson & Peck, L.C.

399 North Main, Ste 300

Logan, Utah 84321

Re: Cummings v. Stephens

Dear Counselors.

Please find enclosed the response to our subpoena to Exit Realty of Bear Lake.

You should note that the Three Bar Ranches purchase contract that was assigned to my client, as produced by Exit Realty, includes the addendum with the legal description with property on both sides of Highway 30. In addition, the title commitment that was provided to Mr. Cummings contains that same description. This is consistent with Mr. Cummings' testimony, and the faxes that he received from Exit Realty that were attached as exhibits 19 and 20 to his deposition.

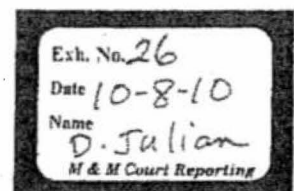
It is clear that the "addendum one" with the exclusionary language that was attached to exhibit 3 in the deposition was a fabrication and produced after the fact. As far as we can tell, this fabricated addendum first appeared as part of attachment 1 to your June 11 2008 letter to me (after we had notified you about the altered deed). The title commitment that has been produced by your clients with the legal description containing the exclusionary language is also highly suspect. Finally, the unsigned "addendum # 3" which you included as page 1 of exhibit 6 to Mr. Cummings deposition was first disclosed as an attachment to your June 11, 2008, letter. It is very apparent in comparing this document with the rest of the purchase agreement that it was not prepared until after the fact.

At this time, we are weighing our options about what to do with these troubling revelations, and will keep you apprised.

Sincerely,

Nathan M. Olsen

enclosures



Appd Pmt Motn Reconsider

410

Attorneys licensed in Idaho Colorado Oregon Washington Wyoming

Winston V. Beard John G. St. Clair Michael D. Gaffney Harlow J. McNamara Gregory C. Calder Jarin O. Hammer Lance J. Schuster
Gordon S. Thacher Jeffrey D. Brunson Stephen H. Telford Nathan M. Olsen John M. Avondet Julie Stomper Michael W. Brown Blair J. Grover